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SALUS POPULI SUPREMA LEX ESTO

“The welfare of the people shall be the supreme law.”



JASON KANDER
SECRETARY OF STATE

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REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

| Title | Code of State Regulations | Division | Chapter | Rule |
|------------|---------------------------|------------------|------------------------|-------------------------|
| 1 | CSR | 10- | 1. | 010 |
| Department | | Agency, Division | General area regulated | Specific area regulated |

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbolology under the heading of proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety- (90-) day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 85—Division of Business and Community
Services
Chapter 10—Brownfield Remediation
PROPOSED RULE**

4 CSR 85-10.010 General Information

PURPOSE: This rule explains the background of the program and explains eligibility requirements.

(1) Introduction.

(A) Scope and Purpose of the Program. This program is authorized by sections 447.700 to 447.718, RSMo. The purpose of the Brownfield Redevelopment Program is to help facilitate the redevelopment of commercial/industrial sites abandoned or underutilized

due to contamination caused by hazardous substances. Under this program the state of Missouri may provide financial assistance in the form of tax credits to applicants that redevelop and remediate approved sites in accordance with voluntary clean up procedures established by the Missouri Department of Natural Resources (DNR). The program may be used to remediate contaminants as part of the rehabilitation of an existing building or to remediate and demolish existing structures and build a new facility. The program may also be applicable for contaminated sites that have no existing structures. Any state assistance provided shall be the least amount necessary to cause the project to occur and shall result in a positive net fiscal benefit to the state. The goal of the Brownfield Remediation Tax Credit is to help facilitate projects that have voluntarily entered into a cleanup process with the goal of putting the property back into productive use. State statute has provided the DNR Voluntary Cleanup Program (VCP) as a means to accomplish redevelopment through approved remediation activities designed at levels to safeguard and satisfy the planned re-use. The Remedial Action Plan (RAP) is the guide which spells out those remediation activities. It is also the guide to the use of the tax credit.

(B) Discretionary Funding. Brownfield funding is limited by the statute to the least amount necessary to cause the project to occur. The Brownfield Remediation Program is a discretionary financing program. An entitlement program applies a percentage to eligible costs that triggers an issuance of benefits regardless of total project financing. The Brownfield Program identifies specific costs in the remediation process as eligible costs but only pays the least amount necessary to fill the gap between what the applicant can finance and what is needed. As such, the measure of that gap becomes part of the requirements for use of the tax credit.

(C) Prevention of Fraud and Waste. Projects using Brownfield Tax Credits must practice free and open competitive procurement in order to establish fair prices consistent with the market, accounting and source documentation that shows detailed costs, use of professional service providers licensed to do business in the state, and a separation of duties by non-related parties.

(2) Applications and Inquiries. Persons wishing to participate in the program, or find out about eligibility, may do so by filing either an inquiry or an application.

(A) Inquiries. Any person with either a legal interest in a property or with the permission of the owner of the property may submit an inquiry to Department of Economic Development (DED) requesting a non-binding determination of eligibility. Inquiries are not required prior to filing an application. Inquirers need not meet all of the requirements of applicants but will not receive a commitment for benefits unless a later application is made.

(B) Applications. Applications are formal requests for benefits. Applicants must meet eligibility requirements prior to filing an application. Applicants may, but are not required to, file an inquiry first. If the application is approved, DED may commit to providing a benefit. The commitment of a benefit is discretionary.

(3) Eligibility of Projects Generally. To be eligible for Remediation Tax Credits, a project must be submitted by an eligible applicant, include eligible properties, demonstrate adequate financing, meet ownership requirements, include at least one (1) eligible business, and promote economic development.

(4) Eligible Applicants. An applicant must be a taxpayer registered to do business in the state of Missouri with the necessary financing, redevelopment plan, local government endorsements, and experience to carry out a remediation and redevelopment project.

(A) An applicant may be an individual, group of individuals, or any legal entity.

(B) An applicant must own the property. Ownership is defined in these rules.

1. The applicant must be the same person or entity to whom the Voluntary Cleanup Program acceptance letter is issued and to whom the approved Remedial Action Plan is registered.

2. Contaminator ineligible. No applicant may be the contaminator of the property. If the applicant is not the owner, and the owner is a contaminator of the property, then the applicant must show that the applicant is not a related party to the owner and that the applicant's right to acquire the property was the result of an arms-length transaction.

(5) Eligible Properties.

(A) Abandoned and Underutilized Properties. To participate in the program the project proposed must include "abandoned or underutilized property."

1. Abandoned property is real property previously used for, or which has the potential to be used for, commercial or industrial purposes and has been vacant for a period of at least three (3) years from the time an application is made to DED. The property may be owned by a governmental agency or may be privately owned property endorsed by the city or county for inclusion in the program. Prior to an application, the property must have been transferred to an applicant other than the "potentially responsible party" as defined in Chapter 260, RSMo.

2. Underutilized property is real property of which less than thirty-five percent (35%) of the commercially usable space of the property and improvements thereon are used for their most commercially profitable and economically productive use.

3. Contamination: To participate in the program the abandoned or underutilized property must be contaminated by hazardous substances.

A. VCP and RAP Required. Prior to filing an application, the property must have been accepted into the VCP with DNR and have achieved an approved RAP prior to the authorization of any tax credits. Both the VCP and RAP must be issued in the name of the applicant and are not transferable.

B. For the purposes of this program, the term "hazardous substance" has the meaning set forth in section 260.565(1), RSMo, which includes any hazardous substance specified in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC sections 9601 (14) (A-F), and any hazardous waste as defined in section 260.360 or any rules promulgated under sections 260.350 to 260.480, RSMo. Some substances may not qualify as "hazardous" under the Voluntary Cleanup Section. A question regarding what qualifies as a hazardous substance should be directed to DNR.

(B) Project Viewed as a Whole. A project is determined to be eligible by looking at the project as a whole. The project may contain properties which are not in themselves eligible but which are immediately adjacent to abandoned or underutilized properties.

(6) Project Financing.

(A) Applicant's Ability to Finance the Project. DED will evaluate the applicant's ability to finance the project as part of determining eligibility for tax credits. The applicant must demonstrate that he/she possesses or has access to sufficient capital to complete both the remediation and redevelopment portions of the project. Project financing may come in the form of debt or equity sources, but each must be committed and confirmed prior to the authorization of tax credits.

1. DED evaluation of applicant financing. DED will evaluate the information submitted to determine if the applicant has maximized all other sources of financing.

2. Least amount necessary. Because Remediation Tax Credits under the Brownfield Program are limited to the "least amount necessary to cause the project to occur," all debt and equity sources must be maximized. Bank loan amounts, loan to value ratios, interest rates and terms, market capitalization rates, and other measures consistent with real estate development projects will be evaluated to ensure that the applicant has minimized any financing gap. The

applicant must demonstrate that the projected internal rate of return is below a market rate for comparable projects without such incentives, and that the Brownfield incentives will provide only up to a market rate of return. Market rate of return must be demonstrated to DED as a pre-tax internal rate of return; however, other risk and return factors may be considered. The return should be demonstrated over a period of five to ten (5-10) years. Other state incentives should not be included as equity in this calculation.

3. Local economic development incentives. If the applicant is receiving any local government financing, such as tax increment financing, the applicant must submit to DED documentation such as the tax increment financing (TIF) plan and development agreement, describing the local benefit being provided for the project.

(7) Ownership.

(A) Exception for Inquiries. Inquirers need not show ownership, but must show an interest in the property such as an option or a letter from the owner granting permission to inquire. Inquirer need not have unrestricted access to the property, but if access is not available, DED may terminate the inquiry without a decision.

(B) Ownership Required. The applicant must demonstrate either—
1. Ownership of the property; or

2. Written documentation of a right to obtain ownership of the property (such as an option) prior to the final determination by DED. The applicant will be required to gain fee simple title of the property prior to any authorization of tax credits.

(C) All applications submitted for properties owned by private persons or entities must be accompanied by a written endorsement from the city or county, as applicable.

(D) The property may be owned by a governmental entity at the time an application is submitted for the determination of eligibility.

(E) Access. The applicant must show proof of access to the property from the owner for the purposes of inspection and testing with no such restriction that would otherwise prevent obtaining the most accurate portrayal of the types and extent of environmental contamination. The lack of ability to adequately inspect and test the property shall be a cause for denial of the application.

(F) Awards Provided only to Property Owner. Awards under this program will be provided only to the owner of the property. The program contemplates that the process of determination of eligibility may occur prior to ownership; however, no award of tax credits shall be made until such applicant has become the property owner. No award of tax credits may be assumed or transferred from one (1) applicant to another.

(G) Permits. The applicant must obtain any permits or rezoning necessary from the appropriate state or local governmental agency prior to the authorization of tax credits.

(8) Eligible Business.

(A) Mixed Use is Eligible.

1. Mixed use developments (residential rental and business, where the business generates enough economic impact to qualify) may be eligible.

(B) Ineligible Businesses.

1. Ineligible businesses include residential facilities (owner occupied and rental), facilities owned by a governmental agency for its internal operations (except for revenue producing enterprises), religious-based organizations or facilities, facilities for political organizations, or others as determined by DED at its discretion.

(C) Mix of Eligible and Ineligible Allowed.

1. If an eligible project is to contain some eligible businesses and some ineligible businesses, it may qualify for financial assistance if at least one (1) of the eligible businesses will have at least ten (10) new jobs or twenty-five (25) retained jobs. However, the net state economic benefit would be calculated based only on those businesses that qualify as eligible.

2. The applicant may use the redeveloped facility for its own operations, or may lease space in the facility to others.

(D) Economic Development Required. To be eligible, the project must result in economic development, which can consist of creating or retaining jobs, attracting or retaining businesses, and improving the welfare of the people of Missouri.

1. To be eligible the project must contain both a remediation component (an eligible property) and a redevelopment component (economic development).

2. Projects involving only remediation are not eligible.

3. The eligible project must propose to create at least ten (10) new jobs or retain at least twenty-five (25) jobs, or a combination of the two (2).

A. Applicants must provide adequate proof that their business plan and projections demonstrate the project will meet the job creation/retention requirement.

B. If the applicant proposes a mix of retained jobs and new jobs, each new job will be counted as one (1) job and each retained job will be counted as four tenths (0.4) of one (1) job. The total must exceed ten (10) (new jobs + (retained jobs x 0.4) \geq 10).

C. To be counted, each job must provide not less than an average of thirty-five (35) hours of employment per week.

D. The activities and size of the new businesses, employment history, space requirements, the wages typical to that industry and "displacement," as described in section 8 (d)(iii)(7), of existing jobs will all be considered when evaluating the job projections included in the application.

(9) A "new job" means a full-time employee located at the project location that exceeds the number of jobs located at the project location prior to the commencement of the project. "New job" does not include full-time equivalents or seasonal employees.

(10) A "retained job" is a job which existed within the area of the Brownfield redevelopment and which will be kept at no less salary and benefits after the remediation and redevelopment.

(11) "Displacement" occurs when new businesses shift spending and jobs already in existence from one (1) place to another. All benefits to the state are defined as net new taxes generated from the project activities, and therefore must be new taxes to the state, not taxes already being generated and paid elsewhere. Displacement may cause a reduction in the benefits derived for the project when compared to the costs.

(A) Example: A business with 20 retained jobs and 5 new jobs would provide a combination with a total of 13 jobs. (20 retained jobs times 40% = 8 jobs; 8 + 5 new jobs = 13 total jobs for eligibility purposes.) If 3 of those jobs were merely displacement, then the calculation would be 17 retained jobs (20 retained jobs times 40% = 8 jobs + 2 new jobs (5 total new - 3 displacements) = 10 total new jobs for eligibility purposes).

AUTHORITY: section 447.718.1, RSMo 2000. Original rule filed Feb. 7, 2014.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Economic Development, addressed to General Counsel, Department of Economic Development, Truman Building, Room 680, 301 West High St., Jefferson City, Missouri 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 85—Division of Business and Community
Services
Chapter 10—Brownfield Remediation**

PROPOSED RULE

4 CSR 85-10.020 Remediation Tax Credits

PURPOSE: This rule explains how Remediation Tax Credits are calculated.

(1) Tax Credits: The Brownfield Redevelopment program is structured to provide tax credits in an amount that would cause a fair return on investment to the redeveloper.

(A) Calculation of credits. A successful applicant who is approved and who provides the requisite source documentation for eligible expenses will receive Remediation Tax Credits. The approval of tax credits is discretionary, based on the factors set out in these rules.

(B) Remediation Tax Credits can equal to up to one hundred percent (100%) of the eligible capital and operating costs of the remediation of hazardous substances depending on the need.

(C) The applicant must demonstrate the credits are the least amount necessary for the project to occur, which is defined as the lesser of—

1. The net state economic benefit of the eligible project;

A. The net positive state economic benefit is a benefit-to-cost analysis, measured over a term of years comparing the net new state taxes generated by the redevelopment activities (including construction demand, permanent jobs, and investment) to the costs to the state (the tax credits and other public subsidies included in the project); and

B. Other local, state, and federal resources such as tax credits may be included as a cost in the calculation of state economic benefit;

2. The remaining financing gap, as indicated in the sources and uses, after all applicant debt and equity has been maximized;

3. The actual remediation costs; or

4. The amount of the lowest, most responsible, responsive bid.

A. In determining the lowest most responsible and responsive bid, applicant may, with prior approval of Department of Economic Development (DED), reject bids which are non-responsive or for which applicant believes the bidder is not capable of performing the obligations of the contract. DED will not authorize tax credits in an amount that exceeds the lowest, responsible, responsive bid unless applicant received approval to reject lower bids prior to accepting any bid. Regardless of the foregoing, applicant is free to select any bid; however, the amount of the lowest, responsible, responsive bid will impact only the amount of tax credits DED will approve.

B. DED will only approve rejecting a bid if all bids are judged on the same criteria and the bidding process and evaluation process were fair and impartial.

C. If the applicant cannot document that the bidding process was public, fair, and open then DED will not award tax credits based on the lowest bid but will instead limit the award to the amount shown in the cost estimate provided in 4 CSR 85-8.030.1.

5. DED will retain twenty-five percent (25%) of all tax credits otherwise issued for a project approved for Remediation Tax Credits until DED receives from the applicant a Certificate of Completion Letter from the Department of Natural Resources (DNR) (Completion Letter) indicating that the project was completed in conformance with the Remedial Action Plan (RAP) issued by DNR.

(2) Fees: Projects awarded Remediation Tax Credits under the Brownfield program are subject to an issuance fee of two and one-half percent (2.5%) of the amount of the issuance in accordance with

section 620.1900, RSMo. The fee must be paid to DED prior to the issuance of each tax credit certificate.

(3) Costs Eligible for Reimbursement.

(A) Eligible Remediation Costs. Materials, supplies, equipment, labor, professional engineering, consulting and architectural fees, permitting fees and expenses, and direct utility charges for performing the voluntary remediation activities for the pre-existing hazardous substance contamination and releases. Also included may be the costs of performing operation and maintenance of the remediation equipment at the facility beyond the year (limited to a time period specified by DED) in which the systems and equipment are built and installed at the facility.

1. Ongoing monitoring and testing, if required in the RAP, may be an eligible cost. However, such ongoing monitoring and testing must be disclosed in the initial cost estimate. The applicant should recognize that ongoing monitoring may delay the issuance of a clean letter by DNR, which in turn will extend the period of time during which tax credits shall be retained.

2. In no event shall any ongoing maintenance cost exceed a period of four (4) years (unless an extension is granted as provided in the statute).

(B) Ineligible Costs. Ineligible costs include, but are not limited to:

1. Interest;
2. Legal fees;
3. Remediation that is incurred or performed prior to receipt of a written authorization for Remediation Tax Credits from DED; and
4. Costs incurred for work not in conformance to the RAP.

(C) Demolition.

1. Demolition of walls or other structures to remediate hazardous substances on an eligible property is an eligible cost, but the reconstruction or rebuilding of those structures is not an eligible cost. For example, the removal and disposal of asbestos shingles are acceptable remediation costs, but the replacement of the roof is not. Demolition generally includes only razing, hauling, cost of tipping fees, and rough grade finish or such other finish as required by local codes.

2. Demolition need not be part of the remediation so long as it is on the property where remediation is occurring, the demolition is necessary for the planned use of the property where remediation is occurring, and the demolition is part of the redevelopment plan.

(D) Salvage. Salvage rights must be considered as part of the cost of remediation. The applicant may—

1. Include salvage rights as part of the bid, where the contractor's fee is reduced by an amount in exchange for the right to the salvage; or
2. Retain the salvage in which case the reimbursable costs should be reduced by the value of the salvage retained.

AUTHORITY: section 447.718.1, RSMo 2000. Original rule filed Feb. 7, 2014.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Economic Development, addressed to General Counsel, Department of Economic Development, Truman Building, Room 680, 301 West High St., Jefferson City, Missouri 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 85—Division of Business and Community
Services
Chapter 10—Brownfield Remediation**

PROPOSED RULE

4 CSR 85-10.030 Application Process

PURPOSE: This rule explains the application process for Remediation Tax Credits.

(1) Estimated Project Costs: Applicants must submit a preliminary cost estimate with the application.

(A) These preliminary cost estimates must have been based upon complete inspection and testing of the project facility and project area and be based strictly upon the remediation activities outlined in the Remedial Action Plan (RAP). The applicant must demonstrate a direct connection between the RAP, the cost estimate, the scope of work defined in the formal bid documents, the contract, the work progress inspection reports, the invoicing, and any source documentation sent to Department of Economic Development (DED) for the issuance of tax credits. The redevelopment activities must be delineated separately in the preliminary cost estimate submitted with the application and should be clearly delineated from the cost estimates provided for remediation.

(B) The cost estimate must be prepared by an independent, licensed professional engineer or architect. As used herein the term “independent” means that the individual is not an employee of the applicant or the contractor who ultimately will perform the work.

(C) The cost estimate will be used in the determination of eligibility. However, prior to the authorization of tax credits, each project must complete a formal solicitation of bids using a procurement process that ensures free and open competition including a clearly outlined, detailed scope of work, with all cost categories itemized indicating unit pricing and a not to exceed lump sum amount. Model procurement standards set forth in these rules, or a substantially similar process, shall comply with the requirement for formal, free, and open procurement.

1. The bid documents must be prepared by the licensed professional engineer or architect.

2. The professional engineer and the applicant may choose to bid a general contractor who details work to identified sub contractors or they may provide separate bids for separate activities in a manner to gain access to better pricing.

3. Any authorization of tax credits shall in no event exceed the amount of the lowest most responsible, responsive bid or bids.

(2) The applicant must apply using the forms provided by DED and posted on its website, including the Application Checklist.

(A) Inquirers should use the Applicant Checklist, check the Inquiry box and provide as much detail as possible.

1. The inquirer must complete Sections A (Program Eligibility) and B (Request for Remediation Tax Credits), as well as Exhibit B (Economic Impact) of the Application Checklist.

2. Inquirers must have received from the Department of Natural Resources (DNR) a determination of eligibility for the Voluntary Cleanup Program (VCP).

3. Any determination from DED, in response to an inquiry will relate only to the statutory thresholds necessary to make application to the program. No financing determination will be made by the department until a full application is received and in no event prior to acceptance into the VCP and approval of a RAP.

(B) Applicants must file a completed application. A prospective Applicant for Remediation Tax Credits must complete all preliminary development work typical to a real estate transaction including development of a business plan, a redevelopment plan, market analysis,

detailed property and building inspection, identification of hazardous materials, and financial *pro forma* in advance of the submission of the application.

(C) The applicant shall file a complete application to the DED for evaluation and determination.

(3) Submission of an application for tax credits may be made to: Redevelopment Section, Missouri Department of Economic Development, PO Box 118, Jefferson City, MO 65102.

(4) The following items must accompany the application. Applications without the following will not be considered:

(A) A copy of the executed VCP letter from DNR formally accepting the applicant and the specific property into the Voluntary Cleanup Program. If the property has been accepted into the VCP program, DNR will enter into an agreement with the applicant regarding oversight of the applicable remediation activities;

(B) Documentation showing the ownership of the property. If the applicant is not the owner, then documentation of the applicant's right to acquire the property and the consent of the owner for the filing of the application;

(C) The approved RAP and approval letter issued from DNR;

(D) Cost estimates for the following activities:

1. Remediation;
2. Redevelopment; and
3. Ongoing monitoring and testing costs;

(E) Documentation that all necessary zoning and permitting required to proceed with the project (excluding building and construction permits) has been obtained.

(F) Commitments and proof of financing from all sources of funding dedicated to the project. These commitments must clearly indicate any contingencies or conditions related to use of, or access to, funds.

(5) The following items may be submitted after the application, but before the final determination of eligibility and authorization of tax credits:

(A) A copy of acceptable bid documents and all responses received.

1. Bidding Practices. The applicant, in conjunction with a professional engineer or architect, licensed to do business in the state, shall create a detailed bid document (using the detailed elements included in the RAP) and perform a broad solicitation process, resulting in the collection of at least three (3) responsive, responsible bidders from which a bid shall be selected. The selected bid shall be used to determine the amount of any state participation. All bid documents, notifications, and responses shall be submitted to DED. The applicant must document the reasons for determining any bidder is not capable or any bid is not responsive.

2. Bid documents will be deemed acceptable so long as they materially comply with the model procurement standards found in these rules; and

(B) Relevant construction permits and environmental permits.

(6) The following items must be submitted after determination of eligibility and authorization of tax credits, but prior to the issuance of credits:

- (A) Invoices;
- (B) Proofs of payment;
- (C) Source documents;

(D) An occupancy permit, or equivalent, from the local governing agency; and

(E) All DED forms, made available on the program website, necessary to claim the tax credit.

(7) Approval.

(A) DED will review applications to determine eligibility and the amount, if any, of available financial assistance.

(B) Upon determination that financial incentives are necessary to cause the remediation/rehabilitation to proceed, DED may approve Remediation Tax Credits.

(C) As a condition of any approval of tax credits, the applicant shall enter into a repayment agreement with DED.

1. The repayment agreement shall provide, at a minimum, that if remediation cannot be completed due to additional and unexpected costs, applicant shall fund such additional costs (unless DED agrees otherwise). If the applicant cannot or chooses not to fund the additional costs, applicant will make payment to DED an amount equal to the value of all tax credits issued on the project.

2. In the event that the project (either remediation or redevelopment) cannot be completed due to impossibility, then applicant may retain the value of tax credits issued but will forfeit any tax credits (including the twenty-five percent (25%) retainage) authorized for the project but not yet issued.

3. The repayment agreement will accompany a contingent authorization letter from DED. Any authorization letter remains contingent until such time as the repayment agreement is executed.

(8) Construction. Upon written approval by the lender, DED, DNR, and the appropriate local agency, the remediation and rehabilitation work may begin.

(9) Remediation Tax Credits. Following approval by DED, no more than seventy-five percent (75%) of earned Remediation Tax Credits may be issued when the remediation costs are paid. The remaining Remediation Tax Credits may be issued upon receipt of the Certificate of Completion and submission of all requisite forms and documentation (See 4 CSR 85-10.010.)

AUTHORITY: section 447.718.1, RSMo 2000. Original rule filed Feb. 7, 2014.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Economic Development, addressed to General Counsel, Department of Economic Development, Truman Building, Room 680, 301 West High St., Jefferson City, Missouri 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 85—Division of Business and Community
Services
Chapter 10—Brownfield Remediation**

PROPOSED RULE

4 CSR 85-10.040 Completion and Closing

PURPOSE: This rule explains the process for finalizing a project and releasing any retained credits.

(1) Completion.

(A) The Department of Natural Resources (DNR) will issue a Certificate of Completion when the remediation work has been successfully completed. A copy of the Certificate of Completion must be recorded with the appropriate county recorder's office.

(B) Upon receipt of the Certificate of Completion, and all other forms necessary to claim tax credits by Department of Economic Development (DED), any remaining Remediation Tax Credits authorized for the project may be issued. Necessary forms include Form 447-A (Application for Subsequently Claiming Brownfield Credits) and Schedule EE (Certification of Environmental Compliance).

(C) A claim for retained tax credits must be accompanied by a cover letter indicating—

1. Total project costs (remediation and redevelopment);
2. Number of new jobs created as a result of the project; and
3. Date of completion of entire project (remediation and redevelopment).

(2) Project Timeliness And Compliance.

(A) Compliance with Applicable Laws. The project must operate in compliance with applicable federal, state, and local laws and regulations, including permitting and registration requirements. Failure to comply with such laws, regulations, and permits may be grounds to terminate the tax credit award and may result in the applicant being required to repay the value of any tax credits issued.

(B) Time Period. The Remedial Action Plan (RAP) must indicate a timeline for completion including a maximum estimated time to complete. Failure to complete the remediation project (accepting ongoing maintenance and monitoring activities) prior to the maximum estimated time to complete as shown in the RAP shall result in withdrawal of the approval. The director of DED may grant additional time for good cause shown.

(3) Length of Time to Use Remediation Tax Credits. The Remediation Tax Credit may be redeemed in the same tax year in which the tax credits are received or may be redeemed over a period not to exceed twenty (20) years.

(4) Termination, Suspension, or Revocation of Tax Credits. DED may terminate, suspend, or revoke the tax credits if the eligible project facility fails to continue to meet the conditions set forth in these guidelines. In making such a determination, DED shall consider the severity of the violation, actions taken to correct the violation, the frequency of any violations, and whether the actions exhibit a pattern of conduct by the taxpayer (applicant or lessee). DED shall also consider changes in general economic conditions and the recommendation of the Department of Natural Resources concerning the severity, scope, nature, frequency, and extent of any violations of the environmental compliance conditions. The applicant may appeal the decision regarding termination, suspension, or revocation of any tax credit or exemption in accordance with the procedures outlined in subsections 4 to 6 of section 135.250, RSMo.

(5) Recapture. In the event the applicant sells the abandoned or underutilized property within a five- (5-) year period after the receipt of Remediation Tax Credits the applicant shall repay a portion of the tax credits provided based on the percentage of the applicant's investment for the project to DED's total financial assistance, upon achieving an annual internal rate of return of twenty-five percent (25%). The internal rate of return calculation shall be documented by the applicant's capital gains tax calculation. Applicant investment is equity and debt for the eligible project. In the event the applicant sells the property to a related taxpayer, the calculation of a possible repayment will continue for the five- (5-) year period. See section 447.701, RSMo.

(6) Credits Applicable to Taxes. The Remediation Tax Credits may be used to offset the tax imposed by Chapter 143, RSMo (corporate and personal income tax), excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax otherwise imposed by Chapter 147, RSMo (corporation franchise tax), or the tax otherwise imposed by Chapter 148, RSMo (financial institution tax).

(7) Transferability of Remediation Tax Credits. The recipient may

assign, sell, or transfer, in whole or in part, the Remediation Tax Credits.

(A) To perfect the transfer, the assignor (person selling the tax credits) shall provide written notice to the Department of Revenue (DOR) of the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective, the assignee's name, address, and the assignee's tax period and the amount of tax credits to be transferred. The assignee shall provide written notice to DOR specifying the number of consecutive tax periods the transferred tax credits are to be claimed; except that, the number of tax periods during which the assignee may subsequently claim the tax credits shall not exceed twenty (20) tax periods, less the number of tax periods the assignor previously claimed the credits before the transfer occurred.

(8) Distribution of Tax Credits. For the purpose of the Remediation Tax Credits, in the case of a corporation described in section 143.471, RSMo, or partnership, in computing Missouri's tax liability, such Remediation Tax Credits shall be allowed to the shareholders of the corporation described in section 143.471, RSMo, or the partners of the partnership; and shall be apportioned to the entities described in proportion to their share of ownership on the last day of the taxpayer's tax period.

AUTHORITY: section 447.718.1, RSMo 2000. Original rule filed Feb. 7, 2014.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

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**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 85—Division of Business and Community
Services
Chapter 10—Brownfield Remediation**

PROPOSED RULE

4 CSR 85-10.050 Model Procurement Standards

PURPOSE: This rule sets out safe harbor standards for procurement in Brownfield projects.

(1) Introduction. The Brownfield Remediation Tax Credit program provides Missouri tax credits to eligible applicants to help offset the costs associated with remediation activities necessary to return a building or property to viable re-use. The state's participation is limited to the least amount necessary to cause the project to occur. The applicant must use bidding and procurement practices to provide a basis for evaluating state financial participation in any project, if any.

(A) The applicant is not required to provide his or her contract to the lowest, most responsible, responsive bidder; however, the amount of such low bid will be considered when DED determines its participation in the project.

(2) Applicability. These procurement standards apply to the following activities:

(A) Remediation. Activities associated with remediation include, but may not be limited to:

1. Environmental consultation;
2. Environmental sampling (pre- and post-remediation);
3. Environmental inspections (pre- and post-remediation);
4. Remediation activities, including but not limited to:
 - A. Demolition;
 - B. Hazardous material removal or containment;
 - C. Asbestos abatement; and
 - D. Lead based paint abatement;
5. Inspection and supervision of remediation activities; and
6. Environmental waste hauling and disposal.

(B) Redevelopment. Activities associated with redevelopment including construction, engineering design, construction inspection, and furniture fixtures and equipment (FF&E).

(C) Any other eligible costs reimbursable with tax credits.

(3) Types of Procurement. The formality of procurement required varies based on the value and type of goods or service. Items may not be split or divided in order to fall below a lesser threshold.

(A) *De minimis* purchases. Purchases of goods under one thousand dollars (\$1,000) do not require bidding.

(B) Small purchases. Purchases of goods and services over one thousand dollars (\$1,000) but under twenty-five thousand dollars (\$25,000) may be purchased by obtaining three (3) written offers from vendors. If less than three (3) bids are obtained for any activity, item or service in the small purchases category, the applicant shall contact the Department of Economic Development (DED) and provide a written explanation of the inability to obtain three (3) bids.

(C) Major purchases. Purchases of goods and services valued at twenty-five thousand dollars (\$25,000) and over should follow a formal bidding process, including advertising for bids (or proposals) and receiving sealed written bids. Invitations to bid on specific purchases should be made to all qualified vendors.

1. Descriptions of items or services to be purchased in the invitations to bid should be current, clear, and accurate and should avoid specific brand requirements, although brand names may be used as an example of functional or quality requirements as long as "an equal" product is stated as allowed.

2. The invitation shall be publicly advertised for a period NOT less than once a week for three (3) consecutive weeks (twenty-one (21) days) with a specific deadline (date, place, and time) to allow sufficient time prior to the opening of bids.

3. A period of at least seven (7) days should be allowed between the final advertisement and the designated bid opening.

4. Bids shall be solicited from an adequate number of known qualified companies in a manner intended to obtain at least three (3) qualified bids. In addition to the newspaper of widest circulation, direct solicitation, trade news, and any other means of notification should be employed.

5. The invitation, including specifications and attachments, must clearly describe the goods or scope of services required, allowing bidders to be responsive to the invitation.

6. A standard bid form is required, which identifies quantities (units) by line item activity to allow the bidder to provide unit amounts and totals per line item as well as a total bid price. Any alternative deductible items must also be listed on the bid sheet in the same manner to allow for clear pricing by the bidder.

7. The scope of work must be clearly described and delineated in the bid document and must match the activities and processes itemized in the Department of Natural Resources (DNR) approved Remedial Action Plan (RAP). Costs incurred for activities varying from the scope of work in the RAP may be deemed ineligible for Remediation Tax Credits. It is recommended that the RAP be provided to potential bidders as part of the bid packet.

8. If the salvage rights are to be provided to the contractor, then

the salvage value must be clearly itemized in the bid and the bidder must indicate a reduction in the bid price by that same value.

(D) The applicant must establish criteria for evaluating the bids prior to issuing the solicitation for bids, and prepare a bid tabulation sheet following the receipt of bids, comparing the bids based on the established criteria.

(E) Architects and Engineers. Selection of architects and engineers should be made using a request for qualifications procedure. The pricing for the architect or engineer services may be negotiated after the most qualified bidder has been selected. Evaluation factors for professional services should include at a minimum:

1. The firm's past experience with similar Brownfield projects;
2. Recipient's familiarity with the firm;
3. The firm's availability of staff/capability of staff;
4. The firm's technical and financial resources;
5. The firm's geographic location;
6. The firm's ability to complete projects in a timely manner and within budgetary constraints; and
7. The firm's reputation and compliance with public policy.

(4) Changes to Bids. Changes to the bid documents after solicitation begins, if any, must be sent to all potential bidders who obtained the original bid documents. Addenda cannot be issued after seventy-two (72) hours prior to bid opening. If an addendum is required within seventy-two (72) hours prior to bid opening, the bid opening date shall be extended by at least one (1) week.

(5) Other methods of selection. DED will consider any reasonable and generally accepted method of selection. It is highly recommended that any process that deviates from these guidelines should be approved in advance.

(6) Minimum Qualifications. The bid documents should state the minimum qualifications required to perform the work.

(A) The inspection of the property, determination of hazardous materials in type and quantity, development and drafting of any RAP, development and drafting of any preliminary cost estimate, development and drafting of any bid specifications and the solicitation of any bids, and on-site inspection of remediation and redevelopment work, shall be performed by a professional engineer licensed to do business in the state.

(B) Inspection of remediation work, including demolition, shall be performed by a professional engineer, licensed to do business in the state.

(C) Sampling and testing activities shall be performed by licensed individuals and licensed, experienced laboratories. DNR may also perform similar comparative sampling and laboratory testing to assure compliance and consistency of results.

(D) The remediation, deconstruction, and demolition work shall be completed by experienced firms (licensed where necessary) that maintain the capacity to complete the task and insurance required.

(E) Waste hauling and disposal shall be performed by licensed haulers and only to appropriate landfills licensed to receive the applicable waste.

(7) Applicant Responsibility.

(A) The applicant is responsible for assuring the use of successful and compliant procurement process(es) for the project.

(B) Each award of a contract must be a decision made in writing by the applicant. If any bidders are disqualified or determined to be non-responsive, the reasons for such decision must be included with the bid tabulation sheet.

(C) While the applicant may procure and contract with a consultant that assists with procurement and project management activities, the responsibility for the project activities lie with the applicant.

(8) Record Retention. Applicants must maintain records that document the rationale for the method used for procurement, selection of

the contract type, contractor selection or rejection, and the basis for the selection including cost or price. In addition, all contracts other than small purchases shall contain provisions, which describe contractual remedies when contractors violate contract terms.

(9) Contracting.

(A) Contracts. All procured goods and services (except *de minimus* goods and services) must be secured by a written contract with the terms and conditions for the parties involved and all necessary provisions to ensure performance consistent with state laws and local regulations and protection of the tax credit investment. Contracts must include but not be limited to: specifications, period of service, scope of services, insurance types and required levels, subcontracting limitations, schedules of payment, retainage, inspections, termination, changes or extras, liquidated damages, correction of work, personnel, assignability, reports and information, records and records access, compliance with local and state laws, licensing, and interest of parties.

(B) Award of Contract (Low Bid). The applicant is not required to contract with the lowest, most responsible, and responsive bidder to perform the work. However, the amount of the basis of that bid, including the unit pricing, is the amount at which the Brownfield program will determine the amount of any award of Remediation Tax Credits.

(C) Change Orders.

1. Written change orders are required for all major goods and services contracts and for professional service contracts when there is any change in the scope or price.

2. Change orders must be signed by the contractor and the applicant. DED must be provided a copy of all change orders.

3. Change orders should specify any adjustment to time, price, number of units, or cost.

4. Any increase in cost not provided in a change order will be considered an ineligible cost. All cost increases must be approved in advance by DED.

5. Any change in scope that in any way impacts the RAP or any project financing must result in an immediate notification of the applicant, DNR, and DED.

(D) Copies of all contracts and contract amendments must be provided to DED upon demand.

(E) Contract Pricing.

1. All contract prices must be based on a unit price method. All contracts must include a total, not-to-exceed dollar amount. All activities required to complete the remediation of the property must be itemized in the contract and established with unit pricing. No contractor may provide a lump sum by grouping activities together. For example, waste hauling and tipping fees must be separated.

(F) DED will consider other forms of contracts so long as the state's interests are reasonably protected and such other form of contract is approved in advance.

(G) Contractor Pay Requests. Contractor pay requests must be signed off by the professional engineer and must detail at a minimum, the location of the work, the type of work, the volume of work, the percent of work completed, and any other information that may assist the applicant, DNR, or DED.

(10) Contractor Eligibility.

(A) No contractor may be used in a project supported by Brownfield Remediation Tax Credits that is currently debarred under local, state, or federal law.

(B) All contractors must be registered with E-verify and attest that no undocumented workers or illegal aliens are employed for any work on a Brownfield Remediation Tax Credit project.

(C) Contractors Licensed to Do Business in Missouri. No contractor may be used who is not properly authorized to do business in the state of Missouri and the locality of the project.

(D) Businesses in Good Standing with the Secretary of State. All licensed businesses must be in good standing with the Missouri secretary of state's office.

(11) Additional Costs. It is the responsibility of the applicant to make all efforts to prevent project overruns.

(12) Minority and Women in Business Firms. Applicant must document the efforts made to solicit minority and women in business firms for each of the activities supported with Brownfield Remediation Tax Credits. Direct solicitation includes notification by certified mail with return receipts of opportunities to bid.

(13) Conflict of Interest.

(A) Procurement. Neither the applicant nor any person who is an employee, agent, consultant, officer, or any immediate family member or business partner of the applicant shall benefit in any way through the procurement of supplies, equipment, construction, and services in a Brownfield Remediation Tax Credit Project unless such person (other than the applicant) received such benefit through a written contract, advertised and competitively bid, and such person was the lowest bidder (not lowest and best). Immediate family is defined as husband, wife, son, daughter, father, mother, grandparent, grandchild, stepchild, adopted child, foster child, and wards.

(B) Independence of consultants. Fees and charges by architects, engineers, inspectors, testing facilities, and consultants shall not be eligible costs unless such professionals are non-related to the applicant. Two (2) parties are non-related if the professional is an independent contractor, who was retained following an open and competitive process, and who has no financial interest in the applicant's business.

AUTHORITY: section 447.718.1, RSMo 2000. Original rule filed Feb. 7, 2014.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Economic Development, addressed to General Counsel, Department of Economic Development, Truman Building, Room 680, 301 West High St., Jefferson City, Missouri 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85—Division of Business and Community Services

Chapter 10—Brownfield Remediation

PROPOSED RULE

4 CSR 85-10.060 Miscellaneous

PURPOSE: This rule sets out miscellaneous requirements such as compliance with the Tax Credit Accountability Act and state prohibitions on delinquent taxes.

(1) Pursuant to the Tax Credit Accountability Act of 2004 (Senate Bill 1099, sections 135.800 through 135.830, RSMo) the Brownfield Remediation Program is subject to the following:

(A) Reporting Requirements (section 135.805, RSMo). A recipient of a redevelopment tax credit shall annually, for a period of three (3) years following issuance of tax credits, provide to the Department of Economic Development (DED) information confirming whether the property is used for residential, commercial, or governmental purposes, and the projected or actual project cost, labor cost, and date of completion.

(B) Penalty Provisions (section 135.810, RSMo). After credits have been issued, any failure to meet the annual reporting requirements established in section 135.805, RSMo, or any determination of fraud in the application process shall result in penalties as follows:

1. Failure to report for more than six (6) months but less than one (1) year shall result in a penalty equal to two percent (2%) of the value of the credits issued for each month of delinquency during such time period;

2. Failure to report for more than one (1) year shall result in a penalty equal to ten percent (10%) of the value of the credits issued for each month of delinquency, during such time period up to one hundred percent (100%) of the value of the credit issued, is assessed by way of penalty; and

3. Fraud in the application process shall result in a penalty equal to one hundred percent (100%) of the credits issued. No taxpayer shall be deemed to have committed fraud in the application process for any credit unless such conclusion has been reached by a court of competent jurisdiction or the Administrative Hearing Commission.

(2) Verification of Applicant's Tax Payment Status, When, Effect of Delinquency (section 135.815, RSMo).

(A) Prior to authorization of any tax credit application, DED shall verify through the Department of Revenue (DOR) that the tax credit applicant does not owe any delinquent income, sales, or use taxes, or interest or penalties on such taxes, and through the Department of Insurance, Financial Institutions and Professional Registration that the applicant does not owe any delinquent insurance taxes. Such delinquency shall not affect the authorization of the application for such tax credits, except that the amount of credits issued shall be reduced by the applicant's tax delinquency.

(3) Fee Imposed on Tax Credit Recipients (section 620.1900, RSMo). DED may charge a fee to the recipient of certain tax credits issued by the department, in an amount up to two and one-half percent (2.5%) of the amount of tax credits issued. The fee shall be payable for deposit in the Economic Development Advancement Fund prior to the issuance of tax credits.

(4) Federal Employment Authorization (sections 285.525 to 285.555, RSMo). Business entities and employers are prohibited from knowingly employing, hiring, or continuing to employ illegal aliens to perform work in Missouri. Participation in a federal work authorization program which enables employers to electronically verify employment eligibility is required for all public employers and business entities receiving a state contract or grant in excess of five thousand dollars (\$5,000) or a state-administered tax credit, tax abatement, or loan from the state. Participation in a federal work authorization program is an affirmative defense to an allegation that a business entity knowingly hired an illegal alien. A violation of the prohibition against employing illegal aliens by a business entity awarded a state-administered tax credit from the state will result in the suspension or debarment of the business entity from doing business in this state for a period of three (3) years. A second or subsequent violation will result in the permanent suspension or debarment of the business entity from doing business in this state.

AUTHORITY: section 447.718.1, RSMo 2000. Original rule filed Feb. 7, 2014.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Economic Development, addressed to General Counsel, Department of Economic Development, Truman Building, Room 680, 301 West High St., Jefferson City, Missouri 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 1—Organization; General Provisions**

PROPOSED RESCISSION

7 CSR 10-1.010 Description, Organization, and Information.
This rule complied with section 536.023, RSMo which requires each state agency to adopt as a rule a description of its operation and the methods whereby the public may obtain information or make submissions or requests.

PURPOSE: This rule is being rescinded in order to amend the entire rule to reflect updates to the department's organizational structure consistent with the department's current business practices as required by section 536.023, RSMo.

AUTHORITY: section 536.023, RSMo Supp. 2009. Original rule filed Oct. 14, 1976, effective March 1, 1977. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Feb. 11, 2014.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Transportation, Pamela Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 1—Organization; General Provisions**

PROPOSED RULE

7 CSR 10-1.010 Description, Organization, and Information

PURPOSE: This rule updates the department's organizational structure consistent with the department's current business practices as required by section 536.023, RSMo.

(1) History and Authority. The Highways and Transportation Department was formed when voters approved Constitutional Amendment 2 in November 1979, merging the previously separate Highways and Transportation Departments. Legislation passed in 1996 changed the name of the Highways and Transportation Department to the Missouri Department of Transportation (MoDOT or department). MoDOT is governed by the Missouri Highways and Transportation Commission (commission). The commission has authority over all state highways and transportation programs and facilities as provided by Article IV, Sections 29, 30(a), 30(b), and 30(c) of the *Missouri Constitution*. The number, qualifications, compensation, and terms of the members of the commission are fixed by law. Under Chapter 226, RSMo, the bi-partisan commission is comprised of six (6) members. Commission members are appointed by the governor, by and with the consent of the senate, for terms of six (6) years. Not more than three (3) commissioners can be members of the same political party. The director of MoDOT, as the chief executive officer, and secretary, as record keeper for the commission, are appointed by the commission under Chapter 226, RSMo. MoDOT is responsible for the location, design, construction, and maintenance of the state's highway system including accommodation for non-motorized transportation. MoDOT coordinates and cooperates with the owners and operators of transportation facilities and services, which include transit, air, rail, ports, and waterborne commerce. MoDOT works with these groups in the development and improvement of public and special transit systems, airports, rail facilities, and ports. MoDOT administers federal and state funds for various transportation programs as these funds become available. In carrying out these functions, MoDOT works closely with local governments and citizens of the state in the planning and development of these programs, services, and facilities.

(2) Organization.

(A) General Management.

1. The director is the chief executive officer and is appointed by, and serves at the discretion of, the commission. The director appoints a chief engineer, chief financial officer, chief counsel (with the consent of the commission), and other leaders and employees as the commission may designate and deem necessary. Under the direction of the commission, the director is responsible for the overall operations and performance of the department and prescribes the duties and authority of employees. The selection and removal of all employees is without regard to political affiliation. The duties of the chief engineer, chief financial officer, and chief counsel are as follows:

A. The chief engineer has input on overall department decisions at MoDOT as well as overseeing engineering operations such as planning, construction, and maintenance. This position reports directly to the director and serves as the primary advisor regarding engineering issues. The chief engineer handles MoDOT's day-to-day operations. The chief engineer is also responsible for an oversight role in the preparation and approval of all engineering documents, plans, and specifications. This position provides general oversight of all design, construction, and maintenance work for the department as determined by the director;

B. The chief financial officer is responsible for all administrative operations of MoDOT. This position provides general oversight of financial and business planning, information technology, and other administrative and financial functions as determined by the director; and

C. The chief counsel advises and represents the commission and the director in all actions and proceedings to which either may be a party or in proceedings under Chapters 226 and 227, RSMo, or with respect to any law administered by the commission or any order or proceeding of the commission. The chief counsel is responsible for drafting all contracts, conveyances, agreements, or other documents affecting the commission, property held or acquired by it, and any action taken by the commission. The chief counsel, with the

director's approval, appoints assistant counsel(s) as necessary to represent the commission and the department.

2. The secretary to the commission is responsible for maintaining records of all proceedings of the commission and is the custodian of all records, documents, and papers filed with the commission, department, and other public governmental bodies established by the commission.

(B) Divisions. MoDOT pursues its mission through the following divisions:

1. Audits and Investigations is responsible for performing audits of department operations, external contracts, grant agreements and motor carrier fuel tax returns, and apportioned registrations. The division also investigates fraud, waste, and abuse; handles employee grievances and Equal Employment Opportunity complaints; and analyzes competitive bidding practices;

2. Bridge is responsible for the structural design and detailed plans production for all state highway bridges, including cost estimates and site-specific job special provisions. Additional responsibilities include maintaining the National Bridge Inventory, recommending load posting limits for both state and non-state bridges, and analyzing structures for special superload overweight permit loads traveling within the state;

3. Construction and Materials is responsible for administering all construction contracts awarded by the commission. Contracts are awarded through the competitive bid process, and then work is assigned to project offices located geographically throughout the state. Engineers and technicians assigned to these project offices do field surveying and perform quality control tests on the work performed by contractors to ensure quality construction that improves Missouri's transportation system. Construction and Materials is responsible for sampling and testing of materials used in the construction and maintenance of roadways and structures to ensure compliance with applicable standards and specifications. Construction and Materials personnel analyze pavement designs, roadway foundations, asphaltic concrete, and Portland cement mixtures, as well as carry out soil and subsurface condition surveys and furnish geotechnical information for the design, construction, and maintenance of roads and structures;

4. Customer Relations is responsible for disseminating information on the activities of the commission and MoDOT to the public and to MoDOT personnel. Customer Relations coordinates customer comments to MoDOT through public involvement meetings, customer service representatives, and surveys. Customer Relations helps MoDOT communicate with news media through news releases and personal contact. Customer Relations also improves MoDOT contact with customers by preparing speeches, publications, displays, and plans for communication and marketing. Customer Relations is also responsible for spearheading and directing organizational performance measures to be reported in the *Tracker*, and facilitates process improvement, customer satisfaction, and problem solving teams to improve operational performance;

5. Design is responsible for the location, environmental, and cultural resource studies required for initial evaluation of proposed projects; detailed route studies, ground surveys, and aerial photography; and design and plan preparation including cost estimates for the state transportation projects. Design advertises and makes all preparations for receiving bids for transportation project contracts including the development of specifications and cost estimates prior to advertising for bids. Design is also responsible for acquisition of right of way required for the construction and maintenance of all state highways in addition to properties incidental to the system of state highways in Missouri, and provides relocation assistance for all persons displaced by the commission's right of way acquisition. Design administers the disposal or lease of land considered excess to commission needs and the regulation of outdoor advertising billboards and junkyards adjacent to regulated state highways. Design administers the Scenic Byway Program;

6. Equal Opportunity and Diversity is responsible for directing

the department's Affirmative Action Program and other initiatives aimed at achieving and maintaining a diverse workforce;

7. External Civil Rights is responsible for directing the department's external affirmative action, equal opportunity, and nondiscrimination programs, which include the Disadvantaged Business Enterprise Program, On-the-Job Training Program, Equal Employment Opportunity, Title VI, Americans with Disabilities Act (ADA), and all other nondiscrimination or affirmative action programs related to federal-aid contracting activities;

8. Financial Services is responsible for providing administrative support to MoDOT in accounting, financial reporting, and policy development, building and maintaining an effective system of internal controls, and cost accounting. Financial Services is also responsible for coordinating financial resources and spending plans through forecasting, analysis, and training. Financial Services performs financial planning and fiscal analysis, budget, federal aid, and innovative finance administration functions for the department;

9. General Services is responsible for supporting MoDOT activities by providing guidance and support services in the areas of facilities management, procurement, inventory management, fleet management, and equipment repair;

10. Governmental Relations is responsible for providing a liaison between MoDOT, congressional delegations, and the Missouri Legislature. Staff members disseminate information regarding proposed legislation affecting MoDOT and analyze the content of legislation, legislative proposals, and policy options;

11. Human Resources is responsible for continually developing and improving human resources processes that support MoDOT and its employees in contributing to a quality transportation system. Responsibilities include nationally recruiting college graduates for placement throughout the state and administering employee development programs, personnel policies, the department's pay system, and personnel records;

12. Information Systems is responsible for providing and improving information and communication services used by employees of MoDOT through the operation and maintenance of local and statewide data networks and telephone services. Information Systems staff provide applications programming expertise to support the engineering, financial, operational, and general information needs of MoDOT;

13. Maintenance is responsible for assisting and supporting maintenance activities for the preservation and operation of the state highway system;

14. Motor Carrier Services provides information, credentials, and permits and enforces safety for businesses and individuals interested in commercial property and passenger-carrying operations on public highways in and through Missouri;

15. Multimodal Operations is responsible for administering state and federal programs that support and develop non-highway passenger and freight transportation, which include aviation, railroads, transit, and waterways. Major programs include capital improvements, operating support, technical assistance, safety outreach, and identifying freight efficiencies/opportunities;

16. Risk and Benefits Management is responsible for the management and implementation of medical and life insurance plans for department employees and retirees; administration of MoDOT's self-insurance operations, including workers' compensation, fleet liability, general liability, and property damage recovery; and administration of the safety and health programs;

17. Traffic and Highway Safety is responsible for the safe and efficient movement of people and goods on the state highway system. This includes supporting signing, striping, traffic signals, lighting, intelligent transportation systems (ITS), roadway access, and safety management programs throughout the state. Traffic and Highway Safety is responsible for the coordination of traffic management, incident management, traveler information services, and the radio and emergency communication systems; and is also responsible for planning, directing, and coordinating the solicitation, review, award,

and monitoring of federal highway safety grant contracts and concentrates their efforts in the areas of education, enforcement, and engineering to prevent deaths and injuries from motor vehicle accidents; and

18. Transportation Planning is responsible for collecting, managing, and analyzing data to provide a single source of information to support MoDOT's decision process related to maintenance, construction, and reconstruction of the state transportation system; developing and tracking the five- (5-) Year Highway and Bridge Construction Schedule and the Statewide Transportation Improvement Program; mapping; and developing and coordinating a long range, total transportation system for MoDOT.

(C) Districts. Missouri is geographically divided into seven (7) districts. Each district is led by a district engineer who is responsible for supervising all activities of MoDOT within that particular district. The following counties are included in the indicated districts: Northwest District includes: Andrew, Atchison, Buchanan, Caldwell, Carroll, Chariton, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Holt, Linn, Livingston, Mercer, Nodaway, Putnam, Sullivan, and Worth; Northeast District includes: Adair, Audrain, Clark, Knox, Lewis, Lincoln, Macon, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Schuyler, Scotland, Shelby, and Warren; Kansas City District includes: Cass, Clay, Jackson, Johnson, Lafayette, Pettis, Platte, Ray, and Saline; Central District includes: Boone, Callaway, Camden, Cole, Cooper, Crawford, Dent, Gasconade, Howard, Laclede, Maries, Miller, Moniteau, Morgan, Osage, Phelps, Pulaski, and Washington; St. Louis District includes: Franklin, Jefferson, St. Charles, St. Louis, and the City of St. Louis; Southwest District includes: Barry, Barton, Bates, Benton, Cedar, Christian, Dade, Dallas, Greene, Henry, Hickory, Jasper, Lawrence, McDonald, Newton, Polk, St. Clair, Stone, Taney, Vernon, and Webster; Southeast District includes: Bollinger, Butler, Cape Girardeau, Carter, Douglas, Dunklin, Howell, Iron, Madison, Mississippi, New Madrid, Oregon, Ozark, Pemiscot, Perry, Reynolds, Ripley, St. Francois, Ste. Genevieve, Scott, Shannon, Stoddard, Texas, Wayne, and Wright.

(D) Assigned Entities. Although assigned to the commission or MoDOT by law for organizational purposes, the following commissions, authorities, and districts operate independently of MoDOT: the Bi-State Metropolitan Development District; the Missouri-St. Louis Metropolitan Airport Authority; the Kansas City Area Transportation Authority District; and the Mississippi River Parkway Commission. The Mississippi River Parkway Commission was established by section 226.440, RSMo. All the other entities are authorized by section 14 of the Omnibus State Reorganization Act of 1974 and section 226.007, RSMo.

(3) How to Obtain Information. The official residence of the commission, as well as the offices of the director, chief counsel, commission secretary, and divisions of MoDOT, is the Missouri Department of Transportation Building in Jefferson City, Missouri. Written inquiries by the public should be addressed to the Commission Secretary, Missouri Department of Transportation Building, PO Box 270, Jefferson City, MO 65102. The general information telephone number is (573) 751-2551. Inquiries may be made via email to comments@modot.mo.gov. Information from any district office of the department may be obtained in person, by writing, or by telephoning the District Engineer, Missouri Department of Transportation: Northwest District, 3602 North Belt Highway, St. Joseph, MO 64506-1399, (816) 387-2350; Northeast District, 1711 South Highway 61, PO Box 1067, Hannibal, MO 63401, (573) 248-2490; Kansas City District, 600 NE Colbern Rd., Lee's Summit, MO 64086, (816) 622-6500; Central District, 1511 Missouri Boulevard, PO Box 718, Jefferson City, MO 65102, (573) 751-3322; St. Louis District, 1590 Woodlake Drive, Chesterfield, MO 63017, (314) 275-1500; Southwest District, 3025 East Kearney, PO Box 868, Springfield, MO 65801, (417) 895-7600; and Southeast District, 2675 N. Main Street, PO Box 160, Sikeston, MO 63801, (573) 472-5333.

AUTHORITY: section 536.023, RSMo Supp. 2013. Original rule filed Oct. 14, 1976, effective March 1, 1977. For intervening history, please consult the **Code of State Regulations**. Rescinded and readopted: Filed Feb. 11, 2014.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Pamela Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling
and Reference Methods and Air Pollution Control
Regulations for the Entire State of Missouri

PROPOSED AMENDMENT

10 CSR 10-6.165 Restriction of Emission of Odors. The commission proposes to amend the purpose and section (2). If the commission adopts this rule action, it is the department's intention not to submit this new rule to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan because there is no equivalent federal rule. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

PURPOSE: This rule restricts the emission of excessive odorous matter. This amendment would remove the definitions from the rule that can now be found in 10 CSR 10-6.020, Definitions and Common Reference Tables. The definitions are being removed because they were added to 10 CSR 10-6.020 as part of the Air Program's consolidation of all air rule definitions. The evidence supporting the need for this proposed rulemaking, per 536.016, RSMo, is a Rule Comment Form dated April 2, 2012, noting that the definitions could be removed from this rule because they have been added to 10 CSR 10-6.020.

PURPOSE: This rule restricts the emission of excessive odorous matter. The evidence supporting the need for this [proposed rulemaking] rule, per [section] 536.016, RSMo, are minutes from a May 28, 2009, Missouri Air Conservation Commission meeting, letters from Washington University in St. Louis School of Law and the Attorney General's Office dated October 6, 2006, and odor workgroup meeting notes from 2007.

(2) Definitions. **Definitions of certain terms specified in this rule may be found in 10 CSR 10-6.020.**

[(A) Modification—Any change to a source of odor emissions or source operations, including odor controls, that causes or could cause an increase in potential odor emissions.]

(B) Class IA concentrated animal feeding operation—Any

concentrated animal feeding operation with a capacity of seven thousand (7,000) animal units or more and corresponding to the following number of animals by species listed below:

| Class IA concentrated animal feeding operation 7,000 animal unit equivalents | | |
|---|------------------------|-------------------|
| Animal species | Animal unit equivalent | Number of animals |
| Beef feeder or slaughter animal | 1.0 | 7,000 |
| Horse | 0.5 | 3,500 |
| Dairy cow | 0.7 | 4,900 |
| Swine weighing > 55 lbs. | 2.5 | 17,500 |
| Swine weighing < 55 lbs. | 10 | 70,000 |
| Sheep | 10 | 70,000 |
| Laying hens | 30 | 210,000 |
| Pullets | 60 | 420,000 |
| Turkeys | 55 | 385,000 |
| Broiler chickens | 100 | 700,000 |

(C) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10-6.020.]

AUTHORITY: section 643.050, RSMo [2000] Supp. 2013. Original rule filed April 14, 2010, effective Nov. 30, 2010. Amended: Filed Feb. 18, 2014.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., April 24, 2014. The public hearing will be held at the Elm Street Conference Center, 1730 East Elm Street, Lower Level, Bennett Springs Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., May 1, 2014. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

Title 19—DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 10—Office of the Director
Chapter 33—Hospital and Ambulatory Surgical
Center Data Disclosure

PROPOSED RESCISSION

19 CSR 10-33.010 Reporting Patient Abstract Data by Hospitals and Ambulatory Surgical Centers. This rule established procedures for reporting patient abstract data for inpatients by hospitals and ambulatory surgical centers to the Department of Health.

PURPOSE: This rule is being rescinded as it is being replaced with a rule that updates language to incorporate the federal mandate of Internal Classification of Diseases 10 (ICD-10) coding for hospitals

and ambulatory surgical centers and updates language to improve the reporting process for these entities.

AUTHORITY: section 192.667, RSMo 2000. Emergency rule filed Nov. 4, 1992, effective Nov. 14, 1992, expired March 13, 1993. Emergency rule filed March 4, 1993, effective March 14, 1993, expired July 11, 1993. Original rule filed Nov. 4, 1992, effective June 7, 1993. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Feb. 14, 2014.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Health and Senior Services, Division of Community and Public Health, Harold Kirby, Division Director, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 19—DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 10—Office of the Director
Chapter 33—Hospital and Ambulatory Surgical
Center Data Disclosure**

PROPOSED RULE

19 CSR 10-33.010 Reporting Patient Abstract Data by Hospitals and Ambulatory Surgical Centers

PURPOSE: This rule establishes procedures for reporting patient abstract data for inpatients and outpatients by hospitals and ambulatory surgical centers to the Department of Health and Senior Services and for the management and dissemination of this data.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The following definitions shall be used in the interpretation of this rule:

(A) Coinvestigator means any person or organization that applies to the Department of Health and Senior Services to be a coinvestigator of an epidemiological study;

(B) Department means the Missouri Department of Health and Senior Services;

(C) Epidemiological study means research using patient abstract data to understand, promote, or safeguard the health of a defined population. No marketing study or study designed to use data on a specific provider shall be considered an epidemiological study;

(D) Inpatient encounter means an encounter which begins with the formal acceptance by a hospital or a distinct part of the hospital of a patient who is to receive physician, dentist, or allied services while receiving room, board, and continuous nursing care. It ends with the termination of the room, board, and continuous nursing services, and the formal release of an inpatient from the hospital or the transfer of

the patient to a different distinct hospital unit;

(E) Observation services are those services furnished on a hospital's premises, including use of a bed and periodic monitoring by a hospital's nursing or other staff, which are reasonable and necessary to evaluate an outpatient's condition or determine the need for a possible admission to the hospital as an inpatient. Charges for observation services usually are made on an hourly basis. Observation services usually do not exceed twenty-four (24) hours. However, there is no hourly limit on the extent to which they may be used;

(F) Outpatient encounters means patients seen in the emergency room and patients receiving invasive procedures on an outpatient basis—Current Procedural Terminology (CPT) codes 10000-69999, inclusive. Outpatient encounters shall be reported using CPT codes. International Classification of Diseases (ICD)-10 codes shall not be accepted for outpatient records; and

(G) Public health authority means an agency or authority that is responsible for public health matters as part of its official mandate. Examples of a public health authority include agencies of a state, territory, political subdivision of a state or territory, or an Indian tribe, or persons or entities acting under a grant of authority or contract with a public health authority.

(2) Data which meet the completeness, validity, and consistency criteria in subsections (2)(C) and (D) of this rule shall be submitted to the department or to an association or related organization with which the department has a binding agreement to obtain data on a quarterly basis according to the Data Reporting Schedule in Table 1, included herein. Data shall be considered to be submitted when received by the department or the association or related organization prior to the close of business on the scheduled due date. Requests for extensions shall be submitted to the department at least ten (10) working days prior to the due date as listed in Table 1. Extensions to the submittal schedule may be granted for a maximum of thirty (30) calendar days. The facility shall separately request each additional thirty (30) calendar day extension.

Table 1 – Data Reporting Schedule

| Quarter | Period of Patient Encounter (Discharge Date) | Date Due |
|-----------------|---|-------------------------------|
| 1 st | January 1 – March 31 | June 1 |
| 2 nd | April 1 – June 30 | September 1 |
| 3 rd | July 1 – September 30 | December 1 |
| 4 th | October 1 – December 31 | March 1 of the following year |

(A) Each facility shall submit to the department, or to an association or related organization with which the department has a binding agreement to obtain data, a single record for each patient discharge, according to the schedule shown in Table 1 – Data Reporting Schedule, included herein. For a patient with multiple discharges, a facility shall submit a separate data record for each individual discharge. For a patient with multiple billing claims, a facility shall consolidate the multiple billings into a single discharge data record for submission after the patient's discharge.

(B) The patient abstract data shall include the data elements and conform to the specifications listed in the document entitled "Patient Abstract System File Specifications" dated October 2, 2013, which is incorporated by reference in this rule and is available at the Missouri Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 or on the department's website at <http://health.mo.gov/data/pdf/paslayout.pdf> for all records with a discharge date of October 1, 2014 or later. This rule does not incorporate any subsequent amendments or additions. The patient abstract data shall be submitted electronically through the department's

online system or by any other mutually agreed upon method. The Department of Health and Senior Services, Bureau of Health Care Analysis and Data Dissemination may be contacted by mail at PO Box 570, Jefferson City, MO 65102-0570 or by telephone at (573) 751-6272.

(C) Each data element shall have an acceptable code in at least ninety-nine percent (99%) of the records. Each data element shall be missing or unknown in less than one percent (1%) of records.

(D) The following data elements shall be consistent within at least ninety-nine percent (99%) of individual records:

1. Date of birth, sex, diagnoses, External Cause of Morbidity (ECM) code, Present On Admission (POA) ECM code, ECM Place of Occurrence code, ECM Activity code, ECM Status code, procedure(s);

2. State of residence, zip code, county; and

3. Admission date, procedure date(s), discharge date, date of birth.

(3) After the due date listed in Table 1, included herein, providers shall be allowed fifteen (15) working days from the date of notification by the department to correct identified data submission errors. Revisions of data originally filed shall contain the entire quarterly dataset.

(4) Providers may submit the required data to the department through an association or related organization with which the department has a binding agreement to obtain data. The association or related organization shall provide to the department by January 1 of each year a list of providers for whom it will submit data. Providers selecting this option are responsible for ensuring that the data meets the quality criteria of completeness, validity, and consistency in subsections (2)(C) and (D) of this rule. Data shall be submitted to the association or related organization according to the time schedule in section (2), Table 1, included herein, of this rule. The association or related organization is responsible for ensuring that the data are provided to the department using one (1) of the submission methods specified in subsection (2)(B) of this rule and conform to the specifications listed in the document entitled "Patient Abstract System File Specifications" dated October 2, 2013, which is incorporated by reference in this rule and is available at the Missouri Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 or on the department's website at <http://health.mo.gov/data/pdf/paslayout.pdf> for all records with a discharge date of October 1, 2014 or later. This rule does not incorporate any subsequent amendments or additions. The association shall submit provider data to the department within thirty (30) days following the due date listed in section (2), Table 1, included herein, of this rule. The association or related organization may submit a request for extension, as described in section (2) of this rule, on behalf of a facility.

(5) Providers may submit data directly to the department or through a third party acting as their agent, other than one (1) with which the department has a binding agreement. Providers selecting this option shall be responsible for ensuring that all data specifications conform to the requirements listed in section (2) of this rule. The third party agent may submit a request for extension, as described in section (2) of this rule, on behalf of a facility.

(6) The department may develop and publish reports pertaining to individual hospitals and ambulatory surgical centers. The reports may include information on charges and quality of care indicators. The reports and the data they contain shall be public information and may be released on electronic media. The department shall make the reports and data available for a reasonable charge based on incurred costs.

(7) The department shall use statistical rules to minimize random fluctuations and extreme outliers in publishing provider-specific

reports on charges. The rules may vary by publication but average charges shall not be published on fewer than twenty (20) events.

(8) The department may develop summary reports upon request which do not directly or indirectly identify patients, physicians, or providers. The reports shall be public information. The department shall make the reports available for a reasonable charge based upon incurred costs.

(9) The department shall store the patient abstract data in password-protected directories to limit access of the data only to employees of the department who are designated to have access to the files.

(10) The department may release patient abstract data to a public health authority to assist the agency in fulfilling its public health mission. Public health authorities shall follow the same guidelines used by the department when releasing summary reports based on record-level data. Record-level data shall not be rereleased in any form by the public health authority without the prior authorization of the department. Authorization for subsequent release of the data shall be considered only if the proposed release does not identify a patient, physician, or provider. The following data elements permit identification of a patient, physician, or provider, and shall not be rereleased by a public health authority: patient name; patient Social Security number; any datum which applies to fewer than three (3) patients, physicians, or providers; physician number; provider number; and a quantity figure if one (1) hospital or ambulatory surgical center contributes more than sixty percent (60%) of the amount. However, the department may authorize contact with the patient, physician, or provider based upon the information supplied. The physician and provider that provided care to a patient shall be informed by the public health authority of any proposed contact with a patient.

(11) The public health authority shall agree to the department's requirements regarding the confidentiality, security, and release of data and shall agree to the review and oversight requirements imposed by the department.

(12) Any person may apply to the department to be a coinvestigator of an epidemiological study using patient abstract data. A research protocol shall be submitted which includes all of the following:

- (A) A description of the proposed study;

- (B) The purpose of the study;

- (C) A description of the data elements needed for the study;

- (D) A statement indicating whether the study protocol has been reviewed and approved by an institutional review board;

- (E) A description of data security procedures, including who shall have access to the data; and

- (F) A description of the proposed use and release of the data.

(13) The director of the department shall appoint a data release advisory committee which may be composed of representatives from the department, the Hospital Industry Data Institute (HIDI) of the Missouri Hospital Association (MHA), and other entities. The advisory committee shall review all research protocols of persons applying to be a coinvestigator of an epidemiological study using patient abstract data. The advisory committee shall make a recommendation to the department whether the coinvestigator protocol should be accepted, accepted with conditions, or rejected. The committee shall consider:

- (A) The review made by the staff of the department;

- (B) Whether the proposed study meets the definition of an epidemiological study;

- (C) The potential for the coinvestigator or any other person to use the data for nonepidemiological purposes;

- (D) The professional expertise of the applicant to conduct the study;

- (E) The appropriateness of the proposed study design;

(F) The willingness and ability of the applicant to protect the identity of any patient, physician, or provider;

(G) The data security measures and final disposition of the data proposed; and

(H) Whether the proposed study is relevant to public health in Missouri.

(14) The coinvestigator shall follow the same guidelines used by the department when releasing summary reports based on record-level data. Record-level data released to the coinvestigator shall not be rereleased in any form by the coinvestigator without the prior authorization of the department. Authorization for subsequent release of record-level data or summary reports shall be considered only if the proposed release does not identify a patient, physician, or provider. The following data elements permit identification of a patient, physician, or provider, and are not to be rereleased by a coinvestigator: patient name; patient Social Security number; any datum which applies to fewer than three (3) patients, physicians, or providers; physician number; provider number; and a quantity figure if one (1) hospital or ambulatory surgical center contributes more than sixty percent (60%) of the amount.

(15) The coinvestigator shall agree to the department's requirements regarding the confidentiality, security, and release of data and shall agree to the review and oversight requirements imposed by the department.

(16) The department shall release only those patient abstract data elements to the coinvestigator which the department determines are essential to the study. The National Provider Identifier (NPI) associated with any patient abstract data shall not be released to any coinvestigator. If the research being conducted by a coinvestigator requires a physician number, the department may create a unique number which is not the NPI. The department shall not provide information which links the unique number to the name of the physician.

(17) No epidemiological study conducted with a coinvestigator shall be approved unless the department determines that—

(A) The epidemiological study has public benefit sufficient to warrant the department to expend resources necessary to oversee the project with the coinvestigator;

(B) The department has sufficient resources available to oversee the project with the coinvestigator; and

(C) The data release advisory committee reviewed the study and the director of the department authorized approval.

(18) Public health authorities and coinvestigators receiving data shall be informed by the department of the penalty for violating section 192.067, RSMo.

(19) Any provider which determines that it will be temporarily unable to comply with any of the provisions of sections (1) through (5) of this rule or with the provisions of a previously-submitted plan of correction shall provide the department with written notification of the expected deficiencies and a written plan of correction. This notification and plan of correction shall include the specific reasons why the provider cannot comply with the rule, an explanation of any extenuating factors which may be relevant, the means the provider will employ for correcting the expected deficiency, and the date by which each corrective measure will be completed.

(20) Any provider which is not in compliance with sections (1) through (5) of this rule shall be notified in writing by the department. The notification shall specify the section number and text of the rule in question, the deficiency, and the action which must be taken to be in compliance. The chief executive officer or designee shall have ten (10) working days following receipt of the written notification of non-compliance to provide the department with a written plan for cor-

recting the deficiency. The plan of correction shall specify the means the provider will employ for correcting the cited deficiency and the date that each corrective measure will be completed.

(21) Upon receipt of a required plan of correction, the department shall review the plan to determine the appropriateness of the corrective action. If the plan is acceptable, the department shall notify the chief executive officer or designee in writing and indicate that implementation of the plan should proceed. If the plan is not acceptable, the department shall notify the chief executive officer or designee in writing and indicate the reasons why the plan was not accepted. A revised, acceptable plan of correction shall be provided to the department within ten (10) working days.

(22) Failure of the provider to submit an acceptable plan of correction within the required time shall be considered continued and substantial noncompliance with this rule unless determined otherwise by the director of the department.

(23) Failure of any provider to follow its accepted plan of correction shall be considered continued and substantial noncompliance with this rule unless determined otherwise by the director of the department.

(24) Any provider in continued and substantial noncompliance with this rule shall be notified in writing and reported by the department to its appropriate licensing program within the Division of Regulation and Licensure and the Bureau of Special Health Care Needs, the MO HealthNet Division of the Department of Social Services, and to other state agencies that administer a program with provider participation. The department shall notify the agencies that the provider is no longer eligible for participation in a state program or to receive any monies from the state.

(25) Any provider that has been declared to be ineligible to participate in a state program or to receive any monies from the state shall be eligible for reinstatement by correcting the deficiencies and making written application for reinstatement to the Department of Health and Senior Services. Any provider meeting the requirements for reinstatement shall be notified in writing. Those agencies that received a notice pursuant to section (24) of this rule shall be notified by the Department of Health and Senior Services when the provider has come into compliance.

AUTHORITY: section 192.667, RSMo Supp. 2013. Emergency rule filed Nov. 4, 1992, effective Nov. 14, 1992, expired March 13, 1993. Emergency rule filed March 4, 1993, effective March 14, 1993, expired July 11, 1993. Original rule filed Nov. 4, 1992, effective June 7, 1993. For intervening history, please consult the **Code of State Regulations**. Rescinded and readopted: Filed Feb. 14, 2014.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions thirty-six thousand dollars (\$36,000) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Health and Senior Services, Division of Community and Public Health, Harold Kirbey, Division Director, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Department of Health & Senior Services**
Division Title: Community and Public Health
Chapter Title: 33-Hospital and Ambulatory Surgical Center Data Disclosure

| | |
|-------------------------------|---|
| Rule Number and Title: | 19 CSR 10-33.010 Reporting Patient Abstract Data by Hospitals and Ambulatory Surgical Centers |
| Type of Rulemaking: | Proposed Rule |

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|--|---|
| DHSS | \$36,000 |
| | |
| | |

III. WORKSHEET

Labor cost (Research Analyst time): 200 hours x \$50/hour = \$10,000

Labor cost (ITSD work on modifications to PASRA): 1,040 hours x \$25/hour = \$26,000

IV. ASSUMPTIONS

DHSS costs include research analyst time to modify programs and perform testing, as well as ITSD work to modify the online reporting application (PASRA).

The modifications will be on existing information systems in order to be able to collect ICD-10 codes instead of ICD-9 codes from hospitals and ambulatory surgery centers.

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its Order of Rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the Proposed Rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

Division 20—Division of Learning Services Chapter 400—Office of Educator Quality

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under section 161.092, RSMo Supp. 2013, and section 168.128, RSMo 2000, the board adopts a rule as follows:

5 CSR 20-400.375 Districts Effectively Evaluating Educators is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 2, 2013 (38 MoReg 1972-1975). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Elementary and Secondary Education (department) received four (4) comments on the proposed rule.

COMMENT #1: Kate Casas, State Director, Children's Education Alliance of MO requested an increase in transparency and effectiveness by 1) specifying the percentage of individual educator evaluations to be based on student growth; 2) providing more detail about the value added model used to calculate student growth; 3) greater detail on how student growth will be used to evaluate educators not

teaching tested grades and subjects; and 4) discouraging districts from allowing teachers to collectively bargain on the design and implementation of new evaluation systems.

RESPONSE: The department has designed, published, and posted materials to support this rule which provide greater detail about the use of student growth as one (1) of several balanced measures to be used to evaluate educator performance. These guidelines also include additional details about Missouri's value added model and the use of student growth to evaluate educators not teaching tested grades and subjects. Additionally, the department is creating and will publish and post supporting guidelines to this rule regarding necessary policy to support educator evaluation. These guidelines include statements relevant to collective bargaining.

COMMENT #2: Lea Crusey, Missouri State Director, StudentsFirst requested consideration of additional suggestions to ensure that performance evaluations have a great impact in improving student performance. These suggestions included: 1) require meaningful teacher evaluations based significantly (fifty percent (50%) recommended) on student growth measures and other multiple measures focused on student outcomes that rate teachers according to four (4) levels of effectiveness and include opportunities for feedback linked to professional development; 2) require meaningful principal evaluations based significantly (fifty percent (50%) recommended) on school-wide student growth measures and effective management of teachers that rate principals according to four (4) levels of effectiveness; 3) eliminate or reform tenure in K-12 education by requiring attainment and maintenance be based on consistent effectiveness; 4) provide full authority to districts, not subject to negotiations, to develop and implement meaningful educator evaluations; 5) end forced placement ensuring schools the authority to build and maintain an effective instructional team including the hiring decisions and removal of ineffective teachers from the classroom; and 6) inform parents about teacher effectiveness, including requiring parental notification regarding teacher ineffectiveness and/or parental consent to student assignment with an ineffective teacher.

RESPONSE: The rule and supporting materials direct districts to use student growth measures as a significant contributing factor in the evaluation of teachers and principals. Section 168.128, RSMo, and the *Teacher Tenure Act* authorize and direct boards of education of each school district regarding the evaluation process and other personnel issues, including tenure, teacher placement, and parental notification.

COMMENT #3: Kelli Hopkins, Board Services, Missouri School Boards' Association requested the regulation clearly state whether it is intended to cover teachers and administrators (leaders). The title of the rule refers to "educator evaluation" but the introductory paragraph only references "teachers."

RESPONSE: Section (1) of the rule clearly states that, while section 168.128, RSMo, applies to evaluations for teachers, this regulation applies to the evaluation of administrators (leaders) as well.

COMMENT #4: Mike Wood, Associate Executive Director, Education Policy, Missouri State Teachers Association requested the inclusion of a statement ensuring the results of individual educator evaluations remain a part of the personnel record of the employee and not be shared with a state or federal agency.

RESPONSE: The department is creating and will publish and post supporting materials to this rule regarding necessary policy to support educator evaluation. These materials include reference to the confidentiality of evaluation information as a part of an employee's personnel record.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 36—Alternative Care Review Board**

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, Children's Division under section 207.020, RSMo 2000, and section 210.566.6, RSMo Supp. 2013, the Children's Division adopts a rule as follows:

13 CSR 35-36.010 Alternative Care Review Board is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 2, 2013 (38 MoReg 2025–2026). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation,
Reimbursement and Procedure of General
Applicability**

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.152, 208.153, and 208.201, RSMo Supp. 2013, the division amends a rule as follows:

13 CSR 70-3.200 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 15, 2013 (38 MoReg 1877–1879). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: MO HealthNet Division (MHD) received one (1) comment from Missouri Emergency Management Services Agency (MEMSA). The commenter expressed support for all the changes and suggested amending subsection (2)(A) by changing the aggregate annual adjustment from five-tenths percent (.5%) to one percent (1%).

RESPONSE AND EXPLANATION OF CHANGE: MO HealthNet has changed the language in subsection (2)(A) from five-tenths percent (.5%) to one percent (1.0%) and it is printed below.

13 CSR 70-3.200 Ambulance Service Reimbursement Allowance

(2) Ambulance Service Reimbursement Allowance Rate beginning October 1, 2013. The ambulance service reimbursement allowance rate beginning October 1, 2013 determined by the division, as set forth in subsection (1)(B) above, is as follows:

(A) The ambulance service reimbursement allowance rate shall be three and seventy-four hundredths percent (3.74%) of gross receipts as determined in paragraph (1)(A)5. above with an aggregate annual adjustment, by the MO HealthNet Division, not to exceed one percent (1.0%) based on the ambulance services total gross receipts. No ambulance service reimbursement allowance shall be collected by the Department of Social Services if the federal Centers for Medicare and Medicaid Services (CMS) determines that such reimbursement

allowance is not authorized under Title XIX of the Social Security Act.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 25—Physician Program**

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.153 and 208.201, RSMo Supp. 2013, the division adopts a rule as follows:

**13 CSR 70-25.120 MO HealthNet (Medicaid) Payment for
Certain Services Furnished by Certain Physicians in Calendar
Years 2013 and 2014 is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 15, 2013 (38 MoReg 1880–1881). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 40—Optical Program**

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.152, 208.153, and 208.201, RSMo Supp. 2013, the division amends a rule as follows:

**13 CSR 70-40.010 Optical Benefits and Limitations—MO
HealthNet Program is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 15, 2013 (38 MoReg 1882–1883). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 45—Hearing Aid Program**

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.152, 208.153, and 208.201, RSMo Supp. 2013, the division amends a rule as follows:

13 CSR 70-45.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 15, 2013 (38 MoReg 1883–1884). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The MO HealthNet Division (MHD) received one (1) comment on the proposed amendment.

COMMENT: Scott George, with the Mid-America Hearing Center, requested that subsection (14)(B) not be deleted. If providers cannot be reimbursed for in-shop repairs, the repairs will likely be sent to the manufacturer to the detriment of the hearing impaired consumer. RESPONSE AND EXPLANATION OF CHANGE: After review with the State Audiology Consultant the MHD concurs. Subsection (14)(B) will remain in the rule.

13 CSR 70-45.010 Hearing Aid Program

(14) Hearing Aid Repairs. MO HealthNet will cover necessary repairs to any eligible participant's hearing aid that is no longer under warranty. The warranty period on new aids or repairs will be for one (1) year from the date the hearing aid is dispensed. The methods of reimbursement for repairs are as follows:

(A) Out-of-shop Repairs. Necessary repairs made out-of-shop, where the aid must be sent out to the manufacturer or repair lab, will be reimbursed at twenty dollars (\$20) plus the invoiced cost of the repair. The twenty dollars (\$20) covers the provider's cost for postage and processing. Included also is any postage for returning the aid to the provider, any insurance fee charged and a six- (6-) month warranty; and

(B) In-shop Repairs. Necessary repairs made in-shop will be reimbursed at the provider's cost for parts plus a reasonable charge for labor. The state consultant will determine the reasonable charge for labor. Repairs will be considered as in-shop repairs for—

1. Any repair made in the provider's office;
2. Any repair made in a provider-owned and/or operated repair or manufacturing lab; or
3. Any repair made by a provider who is employed by or affiliated with another provider who owns or operates a repair or manufacturing lab.

Title 14—DEPARTMENT OF CORRECTIONS Division 80—State Board of Probation and Parole Chapter 5—Intervention Fee

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Corrections under sections 217.040 and 217.755, RSMo 2000, and section 217.690, RSMo Supp. 2013, the State Board of Probation and Parole amends a rule as follows:

14 CSR 80-5.010 Definitions for Intervention Fee is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 2, 2013 (38 MoReg 2043). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 14—DEPARTMENT OF CORRECTIONS Division 80—State Board of Probation and Parole Chapter 5—Intervention Fee

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Corrections under sections 217.040 and 217.755, RSMo 2000, and section

217.690, RSMo Supp. 2013, the State Board of Probation and Parole amends a rule as follows:

14 CSR 80-5.020 Intervention Fee Procedure is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 2, 2013 (38 MoReg 2043–2044). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION Division 1140—Division of Finance Chapter 30—Mortgage Broker and Originator Rules

ORDER OF RULEMAKING

By the authority vested in the Division of Finance pursuant to sections 443.821, 443.825, 443.827, 443.833, 443.839, 443.843, 443.869, 443.887, and 536.023, RSMo Supp. 2013, the division amends a rule as follows:

20 CSR 1140-30.240 Operations and Supervision of Residential Mortgage Loan Brokers is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2013 (38 MoReg 1628–1630). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs, and other items required to be published in the *Missouri Register* by law.

**Title 19—DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

**NOTIFICATION OF REVIEW:
APPLICATION REVIEW SCHEDULE**

The Missouri Health Facilities Review Committee has initiated review of the applications listed below. A decision is tentatively scheduled for May 5, 2014. These applications are available for public inspection at the address shown below:

Date Filed

Project Number: Project Name
City (County)
Cost, Description

02/20/14

#5013 RS: Velma Dowdy Residential Care Facility II
Van Buren (Carter County)
\$1,030,678, Establish 24-bed RCF

#5027 DS: Arrowhead Retirement
Osage Beach (Camden County)
\$11,788,000, Establish 80-bed SNF and 90-bed ALF

#5022 RS: Valley Park West
California (Moniteau County)
\$739,500, Establish 12-bed RCF

02/21/14

#5026 RS: Benton House of Staley Hills
Kansas City (Clay County)
\$10,200,000, Establish 95-bed ALF

#5003 HS: Oglethorpe of St. Louis, LLC
St. Louis (St. Louis County)
\$4,348,504, Establish 44-bed Psychiatric Hospital

#5023 NS: North Oak Health and Rehabilitation
Kansas City (Clay County)
\$11,000,000, Establish 80-bed SNF

#5025 RS: The Grove in Chesterfield Village
Chesterfield (St. Louis County)
\$24,528,970, Establish 95-bed ALF

#5024 HS: Mercy Hospital Springfield
Springfield (Greene County)
\$1,941,385, Acquire Angiography System

Chairman
Missouri Health Facilities Review Committee
c/o Certificate of Need Program
3418 Knipp Drive, Suite F
PO Box 570
Jefferson City, MO 65102

For additional information contact
Karla Houchins, (573) 751-6403.

Any person wishing to request a public hearing for the purpose of commenting on these applications must submit a written request to this effect, which must be received by March 24, 2014. All written requests and comments should be sent to—

Contractor Debarment List

ADDITION TO STATUTORY LIST OF CONTRACTORS BARRED FROM PUBLIC WORKS PROJECTS

The following is an addition to the list of contractor(s) who have been prosecuted and convicted of violating the Missouri Prevailing Wage Law, and whose Notice of Conviction has been filed with the Secretary of State pursuant to Section 290.330, RSMo. Under this statute, no public body is permitted to award a contract, directly or indirectly, for public works (1) to Troy Langley, (2) to any other contractor or subcontractor that is owned, operated or controlled by Mr. Troy Langley including Urban Metropolitan Development, LLC or (3) to any other simulation of Mr. Troy Langley or Urban Metropolitan Development for a period of one year, or until August 8, 2014.

| <u>Name of Contractor</u> | <u>Name of Officers</u> | <u>Address</u> | <u>Date of Conviction</u> | <u>Debarment Period</u> |
|---|-------------------------|--|---------------------------|-------------------------|
| Troy Langley d/b/a Urban Metropolitan Development, LLC Case No. 12AO-CR01752 Jasper County Cir. Ct. | | 1101 Juniper St., Ste. 925 Atlanta, Georgia 30309 | 08/08/2013 | 08/08/2013-08/08/2014 |

Dated this 8 day of January, 2014.


John E. Lindsey, Division Director

The Secretary of State is required by sections 347.141 and 359.481, RSMo 2000, to publish dissolutions of limited liability companies and limited partnerships. The content requirements for the one-time publishing of these notices are prescribed by statute. This listing is published pursuant to these statutes. We request that documents submitted for publication in this section be submitted in camera ready 8 1/2" x 11" manuscript by email to dissolutions@sos.mo.gov.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST KEKS Logistics Excavating, LLC

On January 31, 2014, **KEKS Logistics Excavating, LLC**, a limited liability company of the State of Missouri, filed its Notice of Winding Up with the Missouri Secretary of State. Dissolution was effective on the filing date. All persons and organizations with claims against said corporation must submit in writing to Hackworth, Ferguson & Thompson, L.L.C., 1401 North Main, Suite 200, Piedmont, Missouri, 63957, a summary of the claim, including: 1) claimant's name, address and telephone number; 2) amount of claim; 3) date(s) claim arose (or will arise); 4) brief description of the nature of the debt or the basis for the claim and the collateral used as security, if any; and 5) documentation in support of claim.

Notice: Any and all claims against **KEKS Logistics Excavating, LLC**, will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

NOTICE OF DISSOLUTION TO ALL CREDITORS AND CLAIMANTS OF MOOSE INVESTMENTS, INC.

On February 3, 2014, **Moose Investments, Inc.**, a Missouri corporation ("Corporation"), the principal office of which is located at 327 Otter Lane in Cape Girardeau, Missouri, was voluntarily dissolved by written consent of all shareholders.

All claims against the Corporation should be presented in accordance with this notice. Claims must be made in writing to Craig M. Billmeyer, Attorney at Law, PO Box 1300, Cape Girardeau, MO 63702. Each claim must contain: (1) the name, address, and telephone number of the claimant; (2) the amount of the claim or other relief demanded; (3) the basis of the claim and any documents related to the claim; and (4) the dates on which the event on which the claim is based occurred. Any and all claims against the Corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of this notice.

Rule Changes Since Update to Code of State Regulations

This cumulative table gives you the latest status of rules. It contains citations of rulemakings adopted or proposed after deadline for the monthly Update Service to the *Code of State Regulations*, citations are to volume and page number in the *Missouri Register*, except for material in this issue. The first number in the table cite refers to the volume number or the publication year—37 (2012) and 38 (2013). MoReg refers to *Missouri Register* and the numbers refer to a specific *Register* page, R indicates a rescission, W indicates a withdrawal, S indicates a statement of actual cost, T indicates an order terminating a rule, N.A. indicates not applicable, RAN indicates a rule action notice, RUC indicates a rule under consideration, and F indicates future effective date.

| Rule Number | Agency | Emergency | Proposed | Order | In Addition |
|-----------------|--|--------------------------------|---------------|--------------|--------------------------------|
| 1 CSR 10 | OFFICE OF ADMINISTRATION State Officials' Salary Compensation Schedule | | | | 37 MoReg 1859 38 MoReg 2053 |
| 1 CSR 10-7.010 | Commissioner of Administration | | 38 MoReg 1738 | 39 MoReg 499 | |
| 1 CSR 20-5.015 | Personnel Advisory Board and Division of Personnel | | 38 MoReg 1608 | 39 MoReg 499 | |
| 1 CSR 20-5.020 | Personnel Advisory Board and Division of Personnel | | 38 MoReg 1608 | 39 MoReg 499 | |
| | DEPARTMENT OF AGRICULTURE | | | | |
| 2 CSR 30-10.010 | Animal Health | | 39 MoReg 68 | | |
| 2 CSR 80-2.050 | State Milk Board | | 38 MoReg 1363 | 39 MoReg 253 | |
| 2 CSR 80-5.010 | State Milk Board | | 38 MoReg 1363 | 39 MoReg 253 | |
| 2 CSR 90-10 | Weights and Measures | | | | 38 MoReg 1241 |
| | DEPARTMENT OF CONSERVATION | | | | |
| 3 CSR 10-3.010 | Conservation Commission | | 38 MoReg 1742 | 39 MoReg 253 | |
| 3 CSR 10-4.130 | Conservation Commission | | 38 MoReg 1742 | 39 MoReg 253 | |
| 3 CSR 10-5.430 | Conservation Commission | | 38 MoReg 1742 | 39 MoReg 253 | |
| 3 CSR 10-6.510 | Conservation Commission | | 38 MoReg 1742 | 39 MoReg 254 | |
| 3 CSR 10-6.545 | Conservation Commission | | 38 MoReg 1743 | 39 MoReg 255 | |
| 3 CSR 10-6.550 | Conservation Commission | | 38 MoReg 1743 | 39 MoReg 255 | |
| 3 CSR 10-7.410 | Conservation Commission | | 38 MoReg 1744 | 39 MoReg 255 | |
| 3 CSR 10-7.431 | Conservation Commission | | 38 MoReg 1744 | 39 MoReg 255 | |
| 3 CSR 10-7.433 | Conservation Commission | | 38 MoReg 1744 | 39 MoReg 255 | |
| 3 CSR 10-7.440 | Conservation Commission | | 38 MoReg 1745 | 39 MoReg 255 | |
| 3 CSR 10-7.455 | Conservation Commission | | | | 39 MoReg 403 |
| 3 CSR 10-9.105 | Conservation Commission | | 38 MoReg 1745 | 39 MoReg 256 | |
| 3 CSR 10-9.110 | Conservation Commission | | 38 MoReg 1747 | 39 MoReg 256 | |
| 3 CSR 10-9.442 | Conservation Commission | | 38 MoReg 1750 | 39 MoReg 256 | |
| 3 CSR 10-10.705 | Conservation Commission | | 38 MoReg 1750 | 39 MoReg 256 | |
| 3 CSR 10-10.744 | Conservation Commission | | 38 MoReg 1752 | 39 MoReg 256 | |
| 3 CSR 10-11.130 | Conservation Commission | | 38 MoReg 1752 | 39 MoReg 256 | |
| 3 CSR 10-11.180 | Conservation Commission | | 38 MoReg 1752 | 39 MoReg 257 | |
| 3 CSR 10-11.184 | Conservation Commission | | 38 MoReg 1753 | 39 MoReg 257 | |
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| 4 CSR 85-8.011 | Division of Business and Community Services | | 39 MoReg 591 | | |
| 4 CSR 85-8.020 | Division of Business and Community Services | 38 MoReg 1934 39 MoReg 489T | | | |
| 4 CSR 85-8.021 | Division of Business and Community Services | | 39 MoReg 600 | | |
| 4 CSR 85-8.030 | Division of Business and Community Services | 38 MoReg 1934 39 MoReg 489T | | | |
| 4 CSR 85-9.010 | Division of Business and Community Services | 38 MoReg 1935 39 MoReg 489T | | | |
| 4 CSR 85-9.011 | Division of Business and Community Services | | 39 MoReg 600 | | |
| 4 CSR 85-9.020 | Division of Business and Community Services | 38 MoReg 1936 39 MoReg 489T | | | |
| 4 CSR 85-9.021 | Division of Business and Community Services | | 39 MoReg 602 | | |
| 4 CSR 85-9.030 | Division of Business and Community Services | 38 MoReg 1937 39 MoReg 490T | | | |
| 4 CSR 85-9.031 | Division of Business and Community Services | | 39 MoReg 603 | | |

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| 4 CSR 85-9.041 | Division of Business and Community Services | | 39 MoReg 617 | | |
| 4 CSR 85-9.050 | Division of Business and Community Services | 38 MoReg 1954 39 MoReg 490T | | | |
| 4 CSR 85-9.051 | Division of Business and Community Services | | 39 MoReg 621 | | |
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| 4 CSR 240-13.010 | Public Service Commission | | 38 MoReg 1363 | 39 MoReg 499 | |
| 4 CSR 240-13.015 | Public Service Commission | | 38 MoReg 1364 | 39 MoReg 500 | |
| 4 CSR 240-13.020 | Public Service Commission | | 38 MoReg 1365 | 39 MoReg 502 | |
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| 4 CSR 240-13.055 | Public Service Commission | | 38 MoReg 1375 | 39 MoReg 511 | |
| 4 CSR 240-13.060 | Public Service Commission | | 38 MoReg 1375 | 39 MoReg 512 | |
| 4 CSR 240-13.070 | Public Service Commission | | 38 MoReg 1376 | 39 MoReg 513 | |
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| 4 CSR 240-31.040 | Public Service Commission | | 38 MoReg 1465R | 39 MoReg 667W | |
| 4 CSR 240-31.050 | Public Service Commission | | 38 MoReg 1465R | 39 MoReg 669R | |
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| 4 CSR 240-31.065 | Public Service Commission | | 38 MoReg 1467R | 39 MoReg 672R | |
| 4 CSR 240-31.070 | Public Service Commission | | 38 MoReg 1468R | 39 MoReg 673R | |
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| 4 CSR 240-31.090 | Public Service Commission | | 38 MoReg 1468 | 39 MoReg 676 | |
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| 4 CSR 240-31.110 | Public Service Commission | | 38 MoReg 1469 | 39 MoReg 678 | |
| 4 CSR 240-31.120 | Public Service Commission | | 38 MoReg 1470 | 39 MoReg 680 | |
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| 5 CSR 10-2.010 | Commissioner of Education | | 38 MoReg 1966 | | |
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| 5 CSR 20-100.265 | Division of Learning Services | | 38 MoReg 1758 | | |
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| 5 CSR 20-400.530 | Division of Learning Services | | 38 MoReg 1979 | | |
| 5 CSR 20-400.540 | Division of Learning Services | | 38 MoReg 1981 | | |
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| 5 CSR 20-400.560 | Division of Learning Services | | 38 MoReg 1987 | | |
| 5 CSR 20-400.570 | Division of Learning Services | | 38 MoReg 1992 | | |
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| 5 CSR 20-400.600 | Division of Learning Services | | 38 MoReg 1994 | | |
| 5 CSR 20-400.610 | Division of Learning Services | | 38 MoReg 1994 | | |
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| 5 CSR 20-500.120 | Division of Learning Services | | 38 MoReg 1764 | | |
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| 5 CSR 100-200.035 | Missouri Commission for the Deaf and Hard of Hearing | | 39 MoReg 637 | | |
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| 5 CSR 100-200.070 | Missouri Commission for the Deaf and Hard of Hearing | | 39 MoReg 642 | | |
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| 5 CSR 100-200.130 | Missouri Commission for the Deaf and Hard of Hearing | | 39 MoReg 643 | | |
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| 7 CSR 10-6.050 | Missouri Highways and Transportation Commission | | 38 MoReg 1870 | | |
| 7 CSR 10-6.060 | Missouri Highways and Transportation Commission | | 38 MoReg 1870 | | |
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| 10 CSR 10-6.010 | Air Conservation Commission | | 38 MoReg 2089 | | |
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| 10 CSR 20-6.011 | Clean Water Commission | | 38 MoReg 1534 | | |
| 10 CSR 20-7.015 | Clean Water Commission | | 38 MoReg 913 | 39 MoReg 259 | |
| 10 CSR 20-7.031 | Clean Water Commission | | 38 MoReg 939 | 39 MoReg 291 | |
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| 10 CSR 40-6.070 | Land Reclamation Commission | | 38 MoReg 1299 | 38 MoReg 2045 | |
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| 10 CSR 40-8.040 | Land Reclamation Commission | | 38 MoReg 1301 | 38 MoReg 2046 | |
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| 15 CSR 30-90.170 | Secretary of State | 38 MoReg 1523 | 38 MoReg 1555 | 39 MoReg 398 | |
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| 16 CSR 10-3.010 | The Public School Retirement System of Missouri | | 38 MoReg 1233 39 MoReg 497 | 38 MoReg 2047 | |
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| 19 CSR 30-20.088 | Division of Regulation and Licensure | | 39 MoReg 443 | | |
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| 19 CSR 60-50 | Missouri Health Facilities Review Committee | | | | This Issue |
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| 20 CSR 2063-6.005 | Behavior Analyst Advisory Board | | 38 MoReg 1631 | 39 MoReg 690 | |
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| 20 CSR 2085-12.010 | Board of Cosmetology and Barber Examiners | | 38 MoReg 1637 | 39 MoReg 400 | |
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| 22 CSR 10-2.130 | Health Care Plan | 38 MoReg 1359R | 38 MoReg 1420R | 38 MoReg 2096R | |
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| 7 CSR 60-2.010 | Definitions | .38 MoReg 1591 | Oct. 1, 2013March 29, 2014 |
| 7 CSR 60-2.020 | Approval Procedure | .38 MoReg 1593 | Oct. 1, 2013March 29, 2014 |
| 7 CSR 60-2.030 | Standards and Specifications | .38 MoReg 1595 | Oct. 1, 2013March 29, 2014 |
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| 20 CSR 200-2.100 | Credit for Reinsurance | .38 MoReg 1695 | Jan. 1, 2014June 29, 2014 |
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| 20 CSR 400-11.120 | Continuing Education for Individual Navigators | .38 MoReg 1732 | Sept. 30, 2013March 28, 2014 |
| 20 CSR 400-12.100 | Missouri Health Insurance Pool Transitional Plan of Operation | .38 MoReg 1737 | Sept. 30, 2013March 28, 2014 |
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| 22 CSR 10-2.010 | Definitions | .39 MoReg 5 | Jan. 1, 2014June 29, 2014 |
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| 22 CSR 10-2.054 | Medicare Supplement Plan Benefit Provisions and Covered Charges | .39 MoReg 20 | Jan. 1, 2014June 29, 2014 |
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| 22 CSR 10-2.070 | Coordination of Benefits | .39 MoReg 33 | Jan. 1, 2014June 29, 2014 |
| 22 CSR 10-2.075 | Review and Appeals Procedure | .39 MoReg 34 | Jan. 1, 2014June 29, 2014 |
| 22 CSR 10-2.089 | Pharmacy Employer Group Waiver Plan for Medicare Primary Members | .39 MoReg 36 | Jan. 1, 2014June 29, 2014 |
| 22 CSR 10-2.090 | Pharmacy Benefit Summary | .39 MoReg 38 | Jan. 1, 2014June 29, 2014 |
| 22 CSR 10-2.094 | Tobacco-Free Incentive Provisions and Limitations | .38 MoReg 1524 | Oct. 1, 2013March 29, 2014 |
| 22 CSR 10-2.120 | Wellness Program | .38 MoReg 1525 | Oct. 1, 2013March 29, 2014 |
| 22 CSR 10-2.140 | Wellness Center Provisions, Charges, and Services | .39 MoReg 41 | Jan. 1, 2014June 29, 2014 |

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| 22 CSR 10-3.010 | Definitions | .39 MoReg 42 | Jan. 1, 2014 | June 29, 2014 |
| 22 CSR 10-3.020 | General Membership Provisions | .39 MoReg 42 | Jan. 1, 2014 | June 29, 2014 |
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| 22 CSR 10-3.054 | PPO 2000 Plan Benefit Provisions and Covered Charges | .39 MoReg 46 | Jan. 1, 2014 | June 29, 2014 |
| 22 CSR 10-3.055 | High Deductible Health Plan Provisions and Covered Charges | .39 MoReg 46 | Jan. 1, 2014 | June 29, 2014 |
| 22 CSR 10-3.056 | PPO 600 Plan Benefit Provisions and Covered Charges | .39 MoReg 48 | Jan. 1, 2014 | June 29, 2014 |
| 22 CSR 10-3.057 | Medical Plan Benefit Provisions and Covered Charges | .39 MoReg 48 | Jan. 1, 2014 | June 29, 2014 |
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| 22 CSR 10-3.060 | PPO 600, PPO 1000 Plan, and HDHP Limitations | .39 MoReg 59 | Jan. 1, 2014 | June 29, 2014 |
| 22 CSR 10-3.075 | Review and Appeals Procedure | .39 MoReg 61 | Jan. 1, 2014 | June 29, 2014 |
| 22 CSR 10-3.090 | Pharmacy Benefit Summary | .39 MoReg 64 | Jan. 1, 2014 | June 29, 2014 |

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| 14-01 | Creates the Missouri Military Partnership to protect, retain, and enhance the Department of Defense activities in the state of Missouri. | Jan. 10, 2014 | 39 MoReg 491 |
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| 13-14 | Orders the Missouri Department of Revenue to follow sections 143.031.1 and 143.091, RSMo, and require all taxpayers who properly file a joint federal income tax return to file a combined state income tax return. | Nov. 14, 2013 | 38 MoReg 2085 |
| 13-13 | Advises that state offices will be closed on Friday November 29, 2013. | Nov. 1, 2013 | 38 MoReg 1859 |
| 13-12 | Activates the state militia in response to the heavy rains, flooding, and flash flooding that began on Aug. 2, 2013. | Aug. 7, 2013 | 38 MoReg 1459 |
| 13-11 | Declares a state of emergency and activates the Missouri State Operation Plan due to heavy rains, flooding, and flash flooding. | Aug. 6, 2013 | 38 MoReg 1457 |
| 13-10 | Declares a state of emergency exists in the state of Missouri and directs that the Missouri State Emergency Operations Plan be activated. | May 31, 2013 | 38 MoReg 1097 |
| 13-09 | Designates members of the governor's staff to have supervisory authority over certain departments, divisions, and agencies. | May 3, 2013 | 38 MoReg 879 |
| 13-08 | Activates the state militia in response to severe weather that began on April 16, 2013. | April 19, 2013 | 38 MoReg 823 |
| 13-07 | Declares a state of emergency and directs that the Missouri State Emergency Operations Plan be activated due to severe weather that began on April 16, 2013. | April 19, 2013 | 38 MoReg 821 |
| 13-06 | Declares a state of emergency and activates the Missouri State Emergency Operations Plan in response to severe weather that began on April 10, 2013. | April 10, 2013 | 38 MoReg 753 |
| 13-05 | Declares a state of emergency and directs that the Missouri State Emergency Operations Plan be activated due to severe weather that began on Feb. 20, 2013. | Feb. 21, 2013 | 38 MoReg 505 |
| 13-04 | Expresses the commitment of the state of Missouri to the establishment of Western Governors University (WGU) as a non-profit institution of higher education located in Missouri that will provide enhanced access for Missourians to enroll in and complete on-line, competency-based higher education programs. Contemporaneously with this Executive Order, the state of Missouri is entering into a Memorandum of Understanding (MOU) with WGU to further memorialize and establish the partnership between the state of Missouri and WGU. | Feb. 15, 2013 | 38 MoReg 467 |
| 13-03 | Orders the transfer of the Division of Energy from the Missouri Department of Natural Resources to the Missouri Department of Economic Development. | Feb. 4, 2013 | 38 MoReg 465 |
| 13-02 | Orders the transfer of the post-issuance compliance functions for tax credit and job incentive programs from the Missouri Department of Economic Development to the Missouri Department of Revenue. | Feb. 4, 2013 | 38 MoReg 463 |
| 13-01 | Orders the transfer of the Center for Emergency Response and Terrorism from the Department of Health and Senior Services to the Department of Public Safety. | Feb. 4, 2013 | 38 MoReg 461 |

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